EXTRACTIVE LEVIATHAN:

THE ROLE OF THE GOVERNMENT IN THE RELATIONSHIPS BETWEEN OIL AND GAS INDUSTRIES AND INDIGENOUS COMMUNITIES IN THE ARCTIC REGIONS OF CANADA, THE UNITED STATES AND RUSSIA

By

Evgeniia Sidorova

RECOMMENDED:

Jonathan Rosenberg, Ph.D.

Chanda L. Meek, Ph.D.

Amy Lauren Lovecraft, Ph.D.
Advisory Committee Chair

Mary F. Ehrlander, Ph.D.
Director, Northern Studies Program

APPROVED:

Todd Sherman, M.F.A.
Dean, College of Liberal Arts

John C. Eichelberger, Ph.D.
Dean of the Graduate School

28 August 2015
Date

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A

THESIS

Presented to the Faculty

of the University of Alaska Fairbanks

in Partial Fulfillment of the Requirements

for the Degree of

MASTER OF ARTS

By

Evgeniia Sidorova, LL.B.

Fairbanks, Alaska

August 2015

Abstract

This comparative research analyzes the extent to which the governments of Canada, the United States and Russia affect the relationships between the petroleum extractive industries and Indigenous peoples of the Arctic in order to protect Indigenous peoples from the negative impacts of oil and gas extraction. The hypothesis of this study is that the government can protect Indigenous communities only by providing for their participation in decision-making processes about oil and gas development. The comparative analysis showed that in comparison with Canada and the United States, Russia has the worst legal protection of Indigenous peoples in petroleum-extractive regions. The recognition of Aboriginal title by Canada and the U.S. allowed Indigenous communities the best opportunities to be involved in oil and gas development, whereas Russia failed to grant this recognition. Therefore, the recognition of land claims by the government is the best way to protect traditional lands and lifestyles of Indigenous peoples from the negative externalities of petroleum extraction.

Dedication Page

This thesis is dedicated to my professors: Drs. Amy Lauren Lovecraft, Chanda L. Meek and Jonathan Rosenberg for their excellent academic guidance and help during the writing process. I also would like to thank the Director of Northern Studies, Dr. Mary F. Ehrlander, for her support and advice during the entire graduate program.

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Chapter 1. Introduction

Chapter one introduces the importance and the goals of this study. Section A describes the problem background and research questions. Section B provides information about the comparative methods used in the research, thesis statement, hypothesis, and expected outcomes.

1.1. Social Justice for Indigenous Peoples in the Arctic

The official Arctic strategies of Canada, the United States and Russia highly emphasize the improvement of living conditions of Indigenous peoples in the Arctic as their primary goal. Each government has declared its support of Arctic Indigenous peoples, such as improvement in the quality of life, and possibilities for direct participation in decisions about Arctic oil and gas development, as part of the priorities in its national Arctic policies (Government of Canada, 2009; Government of Russia, 2014; Department of Defense of the U.S., 2013).

The Survey of Living Conditions in the Arctic (SLiCA) measures the living conditions of Arctic residents, including mostly Inuit from Greenland, Chukotka, Alaska, and Canada. The general overview based on findings from a 2007 study showed that Indigenous communities of the Arctic often face social problems like suicide, unemployment, drug and alcohol abuse, family violence, and sexual abuse. The percentage of adults who perceive those social problems occurring in their communities is very high and fluctuates between 60 and 80 percent in all regions under consideration. The unemployment problem seemed to be of the highest concern in comparison with other social issues (from 83 percent in Alaska to 100 percent in Chukotka) (Poppel, B., Kruse, J., Duhaime, G., & Abryutina, L., 2007, p. 10-11).

The recent Arctic Human Development Report (2014) noted the high infant mortality rate (IMR) in the northern regions in comparison with the southern (Larsen & Fondahl, 2014, p. 300-

302). For instance, IMR rate in Greenland, where over 85 percent of the population is Indigenous, is thirty years behind the average rate in Denmark. Similarly, Nunavut (Canada) and the Russian Arctic regions demonstrated the high IMR in comparison with the national average (Koryak AO (Russia) – over 25 infant deaths per 1000 live births; Nunavut – 15 infant deaths per 1,000 live births). The rates for tuberculosis in Greenland (130/100,000) and Nunavut (150/100,000) are more than ten times higher than the national average in the Nordic countries and Canada. The Koryak Okrug in Russia demonstrated the highest rate for tuberculosis (450/100 000) (Larsen & Fondahl, 2014, p. 300-302). High suicide rates among youth were observed among Alaska Natives (more than 40 suicides per 100,000), Canadian Inuit (more than 140 per 100 000), and Greenlanders (more than 100 per 100,000) at the end of 1999 (Larsen & Fondahl, 2014, p. 307).

Thus, the survey data shows that the living and health conditions of the Arctic Indigenous peoples are not very secure. Moreover, the Indigenous communities of the North can be particularly vulnerable to any form of industrial development, which could potentially harm their livelihoods.

Even if the national government recognizes the right of Indigenous peoples to claim their lands and protect their traditional lands and their way of life, it does not mean that people are benefiting from existing legal protection. My initial research found that, firstly, oil and gas drilling damages the traditional lands of Indigenous peoples of the Arctic; and secondly, in some cases, current legislation does not provide enough protection for Indigenous peoples. In an attempt to better understand why this is and to find possible solutions for these problems, I asked the following research question: To what extent do the governments of Canada, the United

States, and Russia affect the relationships between the petroleum extractive industries and Indigenous peoples of the Arctic?

1.2. Research Importance

There are several reasons why this particular study is important for understanding the Arctic and its politics. First, although there are many studies of political participation by Indigenous peoples in oil and gas development in the Canadian Arctic and Alaska, there is a lack of comparison of Alaska Natives and the Inuit with the Russian Arctic Indigenous peoples. This comparison seems necessary and important as Indigenous peoples of the Russian Arctic also have long experience of living under conditions created by crude oil extraction. The comparison of North American and Russian Arctic governmental agendas can help to understand how to improve the existing mechanisms of legal protection of traditional lands and lifestyle of Indigenous peoples from the negative impacts of petroleum extraction in the Arctic. Second, scholars have rarely analyzed the involvement of Indigenous peoples in decision-making processes about oil and gas development from the perspectives of federal and subnational relations. Because of the long historical tradition of close relationships between federal government and Indigenous peoples in North America, few researchers have looked at subnational governments as potential partners of Indigenous peoples. Third, there is a lack of studies on the legal protection of Indigenous peoples in the Arctic regions of Russia. Many political scientists have analyzed the socioeconomic conditions of small-numbered Indigenous peoples in Russia in a general way, without any specific focus on legal and political issues, and without producing case studies related specifically to the Arctic regions. And, it is almost impossible to find research that could explain how Indigenous peoples of the Far North of Russia can participate in oil and gas development from a legal perspective. While foreign English-

speaking researchers do not have expertise in Russian law, their Russian colleagues do not usually publish in English, and if they do, their academic style may not fit Western standards. Consequently, my research fills these three gaps by comparing Canada, the United States and Russia in terms of their policies related to Indigenous peoples and oil and gas development in their Arctic territories.

1.3. Terminology Used in This Study

Aboriginal people - This term is preferable in Canada to define any of the First Nations, Métis, and Inuit people. The term "Aboriginal people" is officially used in the Constitution Act of Canada, Section 35 (Indigenous Foundations, University of British Columbia, 2015).

Indigenous small-numbered peoples *(korennye malochislennye narody)*, also translated as "Indigenous minorities" – This term has been used in the Russian Federation since the government of the Union of Soviet Socialist Republic (USSR) for the purpose of distinguishing the smaller Indigenous groups with populations under 50 thousand peoples from the larger Indigenous groups such as Sakha, Buryat, Tatar and others (Osherenko, 2000, p. 698).

Native people – In direct meaning, this term refers to people originated from a particular place, but it also could be used to define Indigenous peoples from a certain area. The United States uses the term Native to identify Indigenous peoples, as in Native American, Alaska Natives, Native Hawaiian (Indigenous Foundations, University of British Columbia, 2015).

Subgovernments - There is some confusion about the use of the term subgovernment, as it could have several meanings depending on the context. However, in this study, subgovernment is understood from the federal perspectives, as a subnational government. The federal structure of the government requires the sharing of public power between national and subnational governments. This distribution of power is provided by a Constitution or by judicial

interpretation. The Russian Constitution, for example, recognizes three types of governmental authorities: federal, subgovernmental (regional), and joint jurisdictions. Although the central governments in unitary states, in comparison, could also delegate some of their responsibilities to subnational units, the main political power is still concentrated in the central government. Although some unitary countries could have a relatively high level of decentralization, the decision-making process in unitary states is usually highly centralized. The subnational units in unitary states could be better characterized as administrative divisions, not as local powers. Thus, they are better to be called subnational units, not subgovernments (United Nations Committee of Experts on Public Administration, 2011). Therefore, in this research, the term subgovernment refers to the federal subnational government and it means a country subdivision that has political power, and the law creates it, not the central government.

Traditional way of life – This is the term that is used mostly in the Russian legislation in order to describe the "commonly accepted way of life of [Indigenous small-numbered peoples] and their specific livelihood, based on historic experience of Indigenous peoples, and their ancestors in the sphere of land and natural resources use, traditional social organization of their communities, unique ancient culture, continuous practice of their traditions, religion and their beliefs…" (An official definition from the Russian Law "On the Guarantees of the Rights of the Indigenous Small-Numbered Peoples in the Russian Federation" cited by the Russian Association of Indigenous Peoples of the North, Siberia and Far East (RAIPON), 2002).

1.4. The Role of the Arctic in Each Country

1.4.1. Canada's Arctic Policy

When European explorers and traders came to the territories of the Canadian Arctic, they did not consider the Inuit lands as their property. They mostly treated Northern Canada-- which

nowadays includes three Canadian territories: the Yukon, the Northwest Territories, and Nunavut--as an empty wasteland. However, after the establishment of the Canadian Confederation in 1867, Canada began to consolidate the northern lands in order to eliminate potential claims from other countries. The security of the border was increased after the discovery of gold in the Klondike region in 1896, when the Canadian government appointed the Northwest Mounted Police in the Yukon (Huebert, 2014, p. 133-134). Fur trade development also played a significant role in Canada's economy at this time. The Klondike Gold Rush in the Yukon, the production and export of raw materials, and the remoteness of Northern Canada and Arctic regions led to the creation of the idea of a resource frontier, which needed to be protected by the government (Huebert, 2014, p. 133-134; Nuttall, 2010b, p. 31-32).

It was not until the events of the Second World War that the Canadian government developed concern over the strategic importance of the Arctic. Canada started to collaborate with the United States concerning the danger of possible attacks from the Japanese military. The Alaska Highway, the road that connected Anchorage with the road systems of North America was built by the mutual cooperation of the Canadian and American governments (Huebert, 2014, p. 136). The cooperation with the United States continued during the Cold War, when Canada joined the Western allies in order to be protected from a Soviet attack. The Arctic was considered to be the center of the conflict. Due to the potential of attack from Soviet bombers, Canada and the U.S. signed an agreement about the creation of NORAD (North American Air Defense), which still administers the monitoring of airspace of the Arctic territories of North America (Huebert, 2014, p. 137). While the USSR was increasing its military and nuclear power, Canada was playing the role of the little brother of the U.S. by providing help and support. Then, after the Cold War ended, Canadian officials stopped managing military control over the Arctic. The Canadian navy

discontinued its northern placements in 1989, and northern sovereignty over flights of the Aurora long-range patrol aircraft were reduced from twenty-two (1987) to two (1995). Only the Canadian Rangers Units that represented the local volunteer force are still in charge of circumpolar security (Huebert, 2014, p. 138-139).

In May 2009, a security report of the Russian government predicted the possibility of military conflict over mineral resources in the Arctic. This report increased the perception of vulnerability in the Canadian government; as a result, a statement, which was issued right after this report, emphasized the importance of protection of Canadian Arctic resources. The Foreign Affairs Minister Lawrence Cannon announced that while Canada will cooperate with other Arctic states, it will always defend its interests and ownership in the Arctic. He also stressed that Canada considers its Arctic lands as an energy frontier, and aims to become a future 'energy superpower' due to the potential extraction of Arctic petroleum resources (Nuttall, 2010a, p. 230).

After his election in 2006 Prime Minister Stephen Harper declared that the Canadian Arctic is a national priority and a key part of a domestic and foreign policy. He has proposed strengthening Canada's military presence in the Arctic. However, the necessity of military presence in the Arctic caused some skepticism, and it has been suggested that it is better to solve the human security and environmental problems rather than focus on security issues. Despite its huge deposits of mineral resources, the Canadian Arctic is considered to be a relatively poor region, and it obtains many subsidies from the Canadian government. Other Arctic drilling challenges are the lack of infrastructure, and harsh climate (Bergh, 2012, p. 6).

The Canadian government aims not only to extract Arctic oil and gas deposits but also to create a safe space for the Arctic people. The involvement of Indigenous people in policymaking processes appears to be an important attempt to understand current needs and problems of First

Nations and the Inuit. Moreover, their traditional knowledge appears to be highly respected on the high governmental level. The projected resource extraction in the Mackenzie Delta is viewed by many as an economic activity that will provide direct benefits to Aboriginal communities and, also will encourage the participation of First Nations in the economy. At the Arctic Council, Canada closely works with international Indigenous organizations such as the Arctic Athabascan Council, the Gwich'in Council International, and the Inuit Circumpolar Council. Inuit politics has made an impact on domestic and regional identities through land claim and self-government agreements. The Nunavut Land Claims Agreement, for instance, led to the creation of a new Canadian territory Nunavut (Government of Canada, 2009).

Concern about Canadian Arctic sovereignty was reflected in the report *Our Heritage, Our Future: Canada's Northern Strategy,* where the exercising of the Canadian sovereignty was identified as the priority of the future Arctic policy among other goals such as protection of the environmental heritage, social and economic development, and improving and devolving northern governance. Furthermore, the Canadian government under Harper has provided a public relations campaign in support of Arctic sovereignty and Canadian leadership in circumpolar affairs.

During its chairmanship of the Arctic Council in 2013-2015, the Government of Canada strongly promoted the idea of "development *for* the people of the North and *by* the people of the North", which meant the incorporation of interests of people of the North into the Arctic Council's agenda. In order to accomplish the idea of development for the Northern people, the Canadian chair Leona Aglukkaq paid special attention to sustainable community, economic development in the Arctic, and particularly to social development of Indigenous peoples. Marine transportation, safe Arctic shipping, responsible resource development and sustainable tourism in the Arctic were other topics on the Canadian agenda during its chairmanship. Adaptation to climate change,

environmental and scientific issues constituted the rest of the Canadian program for the development of the Arctic Council (Center for Strategic and International Studies, 2014, p. 1-2).

Although Canada promoted the involvement of Northern peoples into Arctic development on the international stage, on the national level concern about sovereignty and security of the Canadian North seems to be more important than the interests of Aboriginal people. As Canadian researchers Abel and Coates pointed out, "northerners were unable to get the attention of the state at times of crisis when help was genuinely required" (Nuttall, 2010a, p. 232-233).

However, in the past Canada suggested including northern Indigenous peoples in the process of understanding environmental threats. Canadian officials strongly supported the Finnish initiative to create the Arctic Environmental Protection Strategy (AEPS), and then, Canada actively participated in the creation and negotiation of this agreement. Moreover, the Finnish government used the Canadian domestic environmental protection document known as the Arctic Environmental Strategy (AES), which included the idea of Arctic international cooperation for the better understanding of the environmental threats, and, as it was mentioned above, the importance of the use of traditional knowledge of Northern Indigenous people about the environment in order to protect nature. Therefore, Canada was a pioneer in the idea of involvement of Indigenous peoples in the process of international cooperation, and also, the Canadians played a large role in the co-drafting and reviewing process (Huebert, 2014, p. 144-145; Keskitalo, 2003, p. 125).

1.4.2. U.S. Arctic policy

The United States does not generally consider itself as an Arctic nation. Alaskans are the only Americans who see the Arctic as part of their national identity. Due to the remoteness of the State of Alaska from the Lower 48, Washington D.C. has historically disregarded the Arctic. The United States became an Arctic nation through the purchase of Alaska in 1867. Unlike Canada and

Russia which have a few subgovernments in their Arctic regions, the U.S. has only one Arctic state in the entire country - Alaska. The American Arctic was mostly viewed as a remote area, not a central topic for a national policy statement. The outbreak of World War II, however, brought danger to the North American Arctic. In 1942, Japan attacked the Aleutian Islands, which is a part of Alaska. The Japanese occupied Kiska and Attu in order to prevent a possible U.S. attack on Midway Island. After the ejection of Japanese occupation, the U.S. decided to build the Alaska Highway, the road that would connect Anchorage to the American road system. The Highway was constructed in cooperation with Canadian allies, in very quick fashion (Huebert, 2014, p. 135). After World War II, interest in the North began to rise during the Cold War, when this zone was conceived as dangerous, with potential for the conflict between the Soviet Union and the United States. Even after the collapse of the USSR, when the Cold War has ended, the U.S. continues to keep military installations and defense bases in Alaska. Even during the beginning of international collaboration in the Arctic, the United States was mostly focused on military and defense interests (Nord, 2014, p. 57-58).

The National Security Presidential Directive (NSPD-66), issued in January 2009 by President George W. Bush, declared the necessity to "work with other Arctic nations to ensure that hydrocarbon and another development in the Arctic region was carried out in accordance with accepted best practices and internationally recognized standards." The following document, National Strategy for the Arctic Region, issued in May 2013 by President Obama, pointed out that the changes in the Arctic affect national security. Also, according to the Strategy, international cooperation could serve as a bridge to protect the fragile environment of the Arctic. The Implementation Plan for the National Strategy for the Arctic Region, issued by the White House in January 2014, recognized two directions in U.S. Arctic policy: 1) promote readiness and

prevention for possible oil pollution and response in cohesion with other Arctic states and 2) collaborate through the Arctic Council for the purpose of advancing U.S. interests in the Arctic The anticipated U.S. chairmanship of the Arctic Council in 2015 was followed by the appointment of a Special Representative for the Arctic Region, who could play a "critical role in advancing American Interests in the Arctic Region", as U.S. Department of State Secretary John Kerry announced (Ebinger, Banks, & Schackmann, 2014, p. 13).

Besides these documents, the Arctic strategies of the Coast Guard and the Department of Defense (DOD) were released as additions to the President Obama's Strategy in May and November 2013, respectively. The Coast Guard's Arctic Strategy sees the Arctic as a dynamic region and highlights the importance of its development, whereas DOD's report is more focused on U.S. security interests, particularly against the effects of climate change (Ebinger, Banks, & Schackmann, 2014, p. 13).

Steinberg (2014) notices the lack of connection between national security and the development of the State of Alaska (p. 181-182). In the eyes of national policymakers, the Arctic (Arctic Ocean) is viewed mostly as a marine environment (maritime zone and national security), because it lies outside state territory; and Alaska is considered as a body of land that requires either development or environmental preservation (Steinberg, 2014, p. 182). Similarly, Heather Exner-Pirot, a Canadian political scientist, notices that the U.S. does not prioritize its interests in the Arctic. She provided an example, when Canada suggested to the U.S. to establish a permanent intergovernmental forum to discuss regional issues, the American government agreed to this cooperation, but without legal obligations, financial contributions, and discussion about military issues. As a result, the U.S. promised only minimal engagement in this initiative (Exner-Pirot, 2014, July 22). In May 2015, the senior U.S. Senator from the State of Alaska, Lisa Murkowski,

expressed her opinion about ignorance of the Arctic in Washington D.C., emphasizing the role of the Arctic Council as a place for international cooperation. She noted that only 32 percent of Americans and 35 percent of Alaskans were aware of the Arctic Council. In contrast, 70 percent of Icelandic people know about this international organization, which means that the U.S. needs to be more engaged in the work of the Arctic Council. Murkowski noted the strong potential of this organization for facilitating discussions on the Arctic issues with other countries, giving an example of the Polar Code, which set security and environmental standards for Arctic shipping. So, Senator Murkowski encouraged the U.S. government to use the upcoming chairmanship of the Arctic Council in 2015 as an opportunity to raise international collaboration in the Arctic (Murkowski, 2015, May 22).

It should be noted that although the U.S. Arctic strategy is not as focused on future resource extraction as much as on its security issues, there are some concerns about potential oil pollution. The U.S. National Arctic Strategy sees the prevention of possible oil spills in the Arctic as a part of its Arctic environmental protection program. The Implementation Plan for the National Strategy for the Arctic Region issued in January 2014, emphasizes Arctic oil spill pollution preparedness and response as a component of national strategy that needs international coordination with Russia (through the Russia-U.S. Contingency Plan) and Canada (Canada-U.S. Contingency Plan in Beaufort Sea) (IP). The programs and organizations related to spill preventions involve state-industry partnership, such as the Joint Industry Task Force (JITF), which is based in the U.S. and the Subsea Well Response Project, which were designed to provide preparedness for oil spills and response (Glickson et al., 2014, p. 137-139).

The oil spill prevention policies in the United States have become much stricter since the Deepwater Horizon oil spill, BP's drilling rig, in the Gulf of Mexico in 2010. In response to this

event, Obama's administration postponed sales of offshore oil leases. The U.S. Coast Guard Commandant Robert Papp reported to the Congress about the lack of preparedness of the United States in its response to Arctic oil spills. Oil companies were also concerned about the offshore oil and gas drilling in the Arctic. They reported that this specific kind of drilling had some significant differences from the previous experience in the Gulf of Mexico. Particularly, the future drilling in the Arctic is likely to be in waters less than 70 meters deep, in contrast to deep-water drilling in the Gulf of Mexico. As a result, the government ordered Shell to deploy two drill ships and twenty additional vessels to US waters north of Alaska. It was considered that this measure could help to reduce the pressure from the escaping oil in the case of blowout (Byers, 2013, p. 201).

The Implementation Plan for the National Strategy for the Arctic Region emphasized the involvement of the State of Alaska, local governments, tribal governments, Alaska Native corporations and key stakeholders in a partnership by the end of 2014 as an essential measure for support of local and regional security in the Arctic (White House, 2014). In October 2014 the U.S. Department of Energy (DOE) announced consultation sessions with Alaska Native Tribes and Corporations for the opportunity to provide input. These sessions aimed to recognize the goals for each level of governance (federal, tribal, state, regional, and stakeholder) for renewable energy development; discuss public-private partnership in future energy projects; supply arrangement of clean energy projects such as the Alaska Strategic Technical Assistance Response Team Program; and manage science and innovative technologies in renewable energy. These sessions are still in a process, so the work with Indigenous communities is ongoing (Office of Indian Energy Policy and Programs, 2014).

1.4.3. Russia and the Arctic

Due to the location of Russia in Northern Eurasia, with territory above the Arctic Circle, the Arctic has always been a part of Russian history. Even before the conquest of Siberia and the Far East, Russian merchants were seeking furs deep into the Russian North, close to the White Sea, and the Urals. Then, the Cossacks traversed Siberia during the sixteenth century; they reached the Pacific Ocean in 1680, and Alaska in 1741. In the eighteenth century Peter the Great sent expeditions to the Kamchatka Peninsula; one of them, headed by Vitus Bering, mapped most of the Arctic coast of Siberia and Alaska. The Arctic was not as much controlled by the Russian government; it was rather managed by diverse groups. For instance, the Arkhangelsk area was a territory of merchants; the Pomors navigated the White Sea region; the Cossacks and merchant families controlled Siberia, and the private Russian-American Company managed Alaska. All these groups were primarily interested in fur exploitation. Later, despite new exploration in the nineteenth century, the public and scientific interest in the Arctic fell. (Laruelle, 2013, p. 24-25)

However, after the Revolution when the Bolsheviks came to the power, the Arctic became the top issue again. The Soviet government highly supported the Indigenous population of the Far North, giving them cultural and linguistic rights, and a relative amount of sovereignty. In the early 1920s, the Bolsheviks initiated new expeditions to the Arctic Ocean. The Northern Sea Route, the Northern Scientific Industrial Expedition, and a Floating Sea Research Institute were the first attempts of the young Soviet government to support new scientific discoveries and to stimulate technological progress (Laruelle, 2013, p. 26)

This tendency was strengthened, during the First Five-Year Plan (1928), which led to rapid industrialization and collectivization. Due to the exploration during this period, the Russian

Arctic appeared as a territory with large amounts of mineral resources. The new resource-rich Russian regions such as Vorkuta (coal), the Kola Peninsula (metals), and Ukhta (oil and gas) began to supply natural resources to support the country's fast growth in connection with industrialization. The special commission of the Northern Sea Route regulated Arctic navigation, and then the state started to ship supplies of natural resources along the route. The government also organized several committees that controlled the construction of the state projects in the Far North, using a forced labor camp system (the Gulag). The biggest committee, the Main Administration of the Northern Sea Route (established in 1932) controlled Arctic research, shipping, mineral production, aviation, agriculture and people in the Far North. Subsequently, this governmental agency was affiliated with several technological achievements in Polar aviation in 1930s, such as the world record for a long-distance flight from Moscow to Vancouver, Washington (United States) (Laruelle, 2013, p. 26-27).

Unsurprisingly, Joseph Stalin used the Arctic discoveries and achievements as state propaganda. The so-called "Red Arctic" became part of the Soviet popular culture. The Red Arctic was viewed as the land where socialism could be easily developed. Cultivating socialist values, this myth about Arctic power was also an essential component of state patriotism. However, after the Stalin's death in 1953, the management of Arctic development was decentralized, and the use of prison labor was stopped. For these reasons, the state was forced to attract workers using high wages – 250 percent higher than the average salary. The Red Arctic idea was almost forgotten, but the memory of the great Northern technological and industrial achievements still exists (Laruelle, 2013, p. 27-28).

The planting of a Russian flag on the bottom of the Arctic Ocean at the North Pole by the Russian polar expedition of Artur Chilingarov in August 2007 was called a publicity stunt

symbolizing Russia as a superpower. President Putin approved the actions of the expedition asRussia's claim on the Lomonosov Ridge. He also noticed the connection of Russian history with Arctic exploration and referred to the intensive Soviet Arctic development and the opening of the Northern Sea Route in the 1930s (Josephson, 2014, p. 331).

Laruelle (2013) ties the growing interest of modern Russia to the Arctic with the reassertion of patriotism in order to increase political legitimacy. The Russian government views the Arctic as a flagship of new nationhood, which is supposed to promote a 'great power' of Russia, the so-called masculine values, which are understood by the Kremlin as Russian patriotism. The focus on the Arctic also allows the Russian government to restore two Soviet symbols – militarized industry and new technology. The socioeconomic development of the Arctic perfectly fits both of them. In other words, patriotism, the Arctic, and the military power could be the part of state-centric patriotic propaganda (p. 9-10). By 2015, Russia has increased its military spending by 97 percent in comparison to past years (Chamberlain, 2015, April 14).

The Russian Arctic strategy was established in "Foundations of the Russian Federation's state policy in the Arctic until 2020 and beyond" in 2008. According to the objectives of this paper, the Russian Federation views the Arctic region as a strategic resource base. The extraction of resources is considered as a great opportunity for the solution of socioeconomic problems, and also for the use of transportation and communication in the Arctic region (Klimenko, 2014, p. 3). Furthermore, the "Transport Strategy of the Russian Federation for the Period until 2030" emphasized the importance of transportation improvement in the context of socioeconomic development in Northern Russia. Nowadays, Russia is looking towards Arctic offshore drilling. According to the United States Geological Society, the Russian outer continental shelf contains approximately 90 billion barrels of undiscovered recoverable oil, 1, 670 trillion cubic feet of

recoverable natural gas, and 44 billion barrels of recoverable natural gas liquids (Zolotukhin, 2011, p. 529). Hence, the Kara, Barents, Pechora seas and the Yamal Peninsula are considered to be strategic regions for offshore oil and gas development. The following document "Russian Strategy of the Development of the Arctic Zone and the provision of National Security until 2020", which was issued in 2013, put an emphasis on the exploration of the Arctic continental shelf, construction of transport infrastructure, and future projects related to offshore petroleum extraction (Klimenko, 2014, p. 3).

The interest of Russia in Arctic petroleum extraction went up, as it did in the U.S. and Canada when oil and gas prices dramatically rose in the second half of the 2000s. In 2008 President Medvedev called the Arctic a resource base of Russia of the [21st] century (Klimenko, 2014, p. 4). President Putin's second presidential term was inaugurated by the consolidation of mineral resources, particularly oil and gas, and nationalization of oil and gas companies. Oil and gas were declared to be strategic resources, and the new legislation allowed Gazprom and Rosneft to swallow other companies (Moe & Rowe, 2009, p. 109). Some companies were still independent, which means Gazprom does not produce or supply 100 percent of the gas resources (others include Lukoil, SurgutNeftegas, TransNafta and others) (Stern, 2005, p. 19). However, Yukos was taken over by state-dominated Rosneft, as a result of bankruptcy; Sibneft (Abramovich) was purchased by Gazprom; and eventually, in 2013, Rosneft purchased 100 percent of TNK-VR stocks (Rosneft, 2013). Therefore, Putin's presidency returned control of the gas industry (Gazprom) to the state or to corporations whose owners are close politically to the government (for instance, Lukoil was used by the government in negotiations with Central Asia) (Pirani, 2009, p. 7). The new federal law, "About foreign investments in organizations whose activity has strategic character for providing of security and safety of the state", requires special

permission from the federal government for any foreign investors who wish to invest in exploration of mineral resources of federal significance in Russia (Article 6) (Consultant Plus, 2008). As a result, foreign companies can gain access to Russian oil and gas resources only through cooperation with Gazprom or Rosneft (Klimenko, 2014, p. 4).

1.5. Oil and Gas Drilling in the Arctic

Although oil and gas development benefits the national economy of Canada, the United States and Russia, it also affects the livelihoods of Indigenous people who live in the lands being developed for this purpose. Direct or indirect benefits of resource extraction could sufficiently improve the lives of Indigenous peoples in the Arctic in the following ways: providing benefits from resource extraction to Indigenous communities, including scholarships, training and related educational opportunities; construction of infrastructure; and support of the local commercial economy (Nuttall, 2010b, p. 158; Andreyeva & Kryukov, 2008, p. 263-265; Mikkelsen, Haley, & Øygarden, 2008, p. 157-159).

On the other hand, there are potential negative externalities:

1) There is a high risk of environmental pollution. Oil and natural gas contain organic compounds, which can discharge into water, air and soil. Like many industries, petroleum extraction produces wastewater, which could enter the groundwater in the case of a pipeline rupture. Polluted water contains many toxic substances such as benzene or toluene. After evaporation of the volatile substances in the air, oil in the polluted water is not visible, which makes it even more dangerous. This water could be used as a source of drinking water for the local population and animals. Polluted water used for washing and bathing lead to direct skin contact. As a result, oil pollution causes chronic diseases of local people, and death of domestic and wild animals. The oil burning creates dioxin emissions in the air. The burst pipes increase

the contamination of air pollutants, which lead to respiratory diseases among the local population. Industrial contaminants can also accumulate in the natural environment and then enter into food chains (Haller et al., 2007, p. 33-34; Caulfield, 2000, p. 491).

2) Road construction can bring alcohol, drugs, and other negative products of urbanization. For instance, the consumption of Western/Russian food instead of traditional diets could bring new diseases in Indigenous communities, such as diabetes; (Mikkelsen, Haley & Øygarden, 2008, p. 152-154).

3) Then there is the so-called North-South conflict where the federal and local governments favor the short-term economic interests of the oil industry over environmental protection (Mikkelsen, Haley & Øygarden, 2008, p. 157). Also, there could be some doubts about certain negative environmental effects from the oil industry among policymakers (Mikkelsen, Haley & Øygarden, 2008, p. 152-154). In other words, there is a conflict between the disparate interests of Arctic residents and industrial societies of the south (Caulfield, 2000, p. 490).

4) Oil drilling and pipelines can change animals' migration patterns, which is bad for hunting and, furthermore, can destroy the local ecological system (Andreyeva, Kryukov, 2008, p. 152-154; Busenberg, 2013, p. 120). The contamination or migration of fish or reindeer significantly reduces the possibility of Indigenous peoples to live by traditional subsistence (Johnstone, 2014, p. 93).

5) The mixed subsistence-based economy, introduced by oil and gas extraction, can be unstable. Oil benefits from Indigenous corporations give communities cash, but they also could trap Indigenous people, who already have a problem finding a permanent source of income.

Because of this, cash can stimulate easy access to alcohol and drugs (Mikkelsen, Haley & Øygarden, 2008, p. 158-159).

6) Cultural struggles of Indigenous peoples exist in the nexus between Native values and Western/Russian culture (Mikkelsen, Haley & Øygarden, 2008, p. 157; Helander-Renvall, 2010, p. 202-205).

The national legislation of each of these countries provides local populations different forms of legal protection from these negative externalities. Each has its approach on how to keep their Indigenous people protected from the negative effects of drilling. These policy strategies are reflected in national legislation. The suites of laws surrounding this issue in each country could be indicators of successful or unsuccessful governmental protection of Native peoples from the negative externalities of the extraction.

Many Indigenous communities are extremely vulnerable to industrial development even without the presence of oil and gas drilling within their traditional lands. The United Nations Department of Economic and Social Affairs (2009) report "State of the World's Indigenous Peoples" recognized oil and gas development as one of those resource-extractive industries, which led to disproportionate costs for Indigenous peoples, such as "the displacement of communities, the deterioration of health and severe environmental degradation." Due to their way of life, which could be different for non-Native observers, it is almost impossible to identify needs and expectations of Native people without their direct involvement in the decision-making process.

1.6. Literature Review

This study draws from several sets of literature, including a variety of different topics. This literature review provides only a short overview of each literature framework; the following chapters of this thesis contain a more thorough review of the literature.

The first set of the literature is an overview of the Arctic strategies of Canada, U.S. and Russia, particularly in the areas of future oil and gas development. This part also includes short historical narrations describing how each country is affiliated with the Arctic. I looked at the official governmental policies of each country, as well as on their interpretations by several authors. Huebert (2014) describes the Canadian Arctic as a region that was under strong military protection for several decades during the period of the Cold War, and then as a zone of the international cooperation between Northern countries (p. 136-138, p. 149-150). The Arctic strategy of Canada has elements of both political approaches, including a focus on the protection of Arctic sovereignty, and, at the same time, on Canadian leadership in circumpolar affairs. The official report "Our Heritage, Our Future: Canada's Northern Strategy" pays special attention to the involvement of Aboriginal peoples of Canada in international affairs. The report mentions the potential development of Arctic petroleum deposits, although it does not emphasize their importance in future Arctic development (Government of Canada, 2009; Nuttall, 2010a, p. 232-233). The Government of the United States has considered the Arctic to be a remote region for a long time. Similar to Canada, the U.S. Arctic was highly militarized during the Cold War (Nord, 2014, p. 49-50). The future strategy of the U.S. Arctic includes a few official documents issued by several agencies – the U.S. Presidential Administration, the Coast Guard, and the Department of Defense. Steinberg (2014) assumes that the U.S. government prioritizes national security in the Arctic without paying much attention to the development of the State of Alaska (p. 181-182).

Similarly, the U.S. government does not show strong interest in the petroleum resources in the Arctic, but there are high concerns about potential oil spills in the Arctic Ocean (Glickson et al., 2014, p. 137-139). Laruelle (2013) points out that, unlike Canada and the U.S., the Russian government has deep historical roots with the Arctic. In Imperial times, the Russian Arctic served mostly as the land for fur extraction, trade and marine transportation. After the October Revolution, the Soviet government made a decision to industrialize the Arctic. She also notes the strong bond between Soviet political ideology and Arctic development and industrialization. The idea of the so-called "Red Arctic" was often romanticized by the Soviet mass media and encouraged many people to move to the North in order to work for resource development. Resource extraction played a significant role in the Arctic development in the USSR (Laruelle, 2013, p. 25-27; Yarovoy, 2014, p. 195-196). After the collapse of the Soviet Union, the interest in the Arctic diminished. Recently, the Russian government re-ignited this interest to the Arctic by placing the Russian flag on the bottom of the Arctic Ocean (Josephson, 2014, p. 331). In 2008, President Medvedev issued the national strategy report "Foundations of the Russian Federation's state policy in the Arctic until 2020 and beyond." This report declared the Arctic to be "the strategic resource base of Russia", referring to the petroleum-rich offshore areas in the Arctic Ocean within the Russian boundaries. The potential resource extraction in the Arctic Ocean is viewed as an opportunity for rapid regional development of the Arctic. The future socioeconomic development of the Arctic regions is identified as the priority of Arctic policy, and this advance is supposed to be provided through petroleum extraction. Therefore, the Russian government considers the extraction of the Arctic offshore energy as a chance to promote regional growth (Klimenko, 2014, p. 3; Rossiyskaya Gazeta, 2009, March 27).

The second set of literature is about social justice for Indigenous peoples regarding oil and gas development. Considering the fact that in many countries, including Canada and the U.S., Indigenous peoples have survived after horrible governmental policies aimed to destroy their cultures and take away their lands, many authors assume that Indigenous peoples have an inherent right to self-determination, and that it is the only viable policy for Indigenous peoples for the years ahead (Behrendt, 2003, p. 87; Imai, 2009, p. 287, p. 314; Berger, 1991, p. 160-161). Nuttall (2000) notes that for the Indigenous peoples of the Arctic, self-determination means the right to live a particular way of life, practice their culture or religion, speak their Native languages, and be able to choose their future economic development (p. 379). Regarding oil and gas development, there is a point of view that Indigenous cultures have descriptive and applied knowledge about their ecosystems, which could suggest possible alternatives for industrial resource extraction. It is necessary to engage with Indigenous communities and develop a cross-cultural dialogue with Indigenous communities, taking consideration of their wishes, wants and needs. The best way to use this knowledge is to involve representatives from Indigenous communities in the policymaking process about oil and gas development. (Lertzman & Vredenburg, 2005, p. 244; Berger, 1977a; Kryukov & Tokarev, 2005, p. 166-168; Eicken, Ritchie, and Barlau, 2011, p. 597). Lertzman & Vredenburg (2005) also assume that it is not appropriate to have non-Indigenous consultants speak for or on behalf of Indigenous peoples. They compare attempts of non-Indigenous individuals to represent Indigenous peoples as if someone wanted to represent scientific knowledge without the requisite scientific training. They also emphasize the role of bi-cultural interaction, suggesting to include bi-culturally educated individuals in communication with Indigenous communities (p. 250). Therefore, the literature review about social justice in regard to oil and gas development indicated that self-determination

is a basic component of legal rights of Indigenous peoples. Self-determination of Indigenous peoples includes their right to preserve their languages, culture, way of life and traditional knowledge. To provide for their self-determination in the conditions of industrial resource extraction, Indigenous peoples need to be involved into the policy-making process.

The next set of literature is devoted to the federal structure of the government in Canada, the United States and Russia, and also on how the federal-subnational relationships impact the Indigenous peoples of the Arctic. Many authors characterize Canadian federalism as mostly decentralized, noticing that provinces have broad powers in social programs such as healthcare, education and social welfare. On the other hand, some provinces and all territories are financially dependent on federal transfers through the so-called equalization of payments program (Thompson, 2012, p. 126; Parker, 2014, p. 80). Bankes (2008) notes that the territories of Canada do not share the same responsibilities as provinces. He also emphasizes that this disproportion exists because the territories were not included into the project of the Canadian Confederation in 1867 (p. 117). In regard to Aboriginal peoples, the federal government has exclusive responsibility for "Indians and Lands reserved for the Indians" (Constitution Act of 1867; Indian Act). Many authors note that the decision of the Supreme Court of Canada, *Calder vs. British Columbia* (1973), began the modern period of treaty-making between Aboriginal communities and the government, as it recognized the right of Indigenous peoples to own their traditionally occupied lands (Bankes, 2008, p. 123; Mason, Anderson, & Dana, 2008, p. 176; Shadian, 2014, p. 71). Besides the right of ownership, land claims agreements usually recognize rights to surface and on subsurface resources (Bankes, 2008, p. 123-124). Alcantara (2013) highlights the controversy between interests of each party during negotiations of these treaties. Due to the necessity to find a consensus between federal, subnational (provincial/territorial) and Indigenous

interests, many land claims agreements are still in the process of consideration (p. 21-24). Parker (2014) describes modern American federalism as more centralized; Congress has more authority than states. Parker explains this tendency by a series of decisions made by the U.S. Supreme Court that interpreted the powers of the Congress broadly (Parker, 2014, p. 159-160). The federal government in the U.S. has exclusive power over Indigenous communities and their members. McBeath and Morehouse note the significance of three decisions written by Justice John Marshall in the establishment of federal supremacy over Indigenous relationships. Regarding Alaska, the Congress adopted the Alaska Natives Claims Settlement Act in 1971. This Act organized thirteen Alaska Native regional and village corporations, giving them the right to receive lands and cash (McBeath & Morehouse, 1994, p. 98). Huhndorf and Huhndorf (2011) argue that most Alaska Natives were in support of this Act, assuming that it was the best way to settle their claims (p. 387). In the case of Russia, there is a point of view that the current model of the Russian federal structure was inherited from the USSR (Sakwa, 2008, p. 238). The Soviet government divided the administrative divisions by three types: national-state, administrative-territorial and national-territorial formations (Ross, 2013, p. 17). After the collapse of the USSR, President Yeltsin suggested to Russian ethnic republics to "take as much sovereignty as you can swallow" (Ross, 2013, p. 20-22). As a result, many Russian republics used their relative sovereignty from the center to expand their powers, which led to some disproportions between the responsibilities of republics and other Russian regions (Goode, 2011, p. 6; Kempton, 2001, p. 221). However, in the second term of presidency of Vladimir Putin, there is some tendency to centralization (Goode, 2011, p. 57; Gill &Young, 2013, p. 151, Kempton, 2001, p. 205). Indigenous peoples in Russia can be divided into two categories: larger Indigenous peoples, whose populations number more than 50 000, and small-numbered Indigenous peoples that have

populations of less than 50 000. Russian legislation recognizes only the latter (Øverland, 2009, p. 169). Kryazhkov (2013) notes that the Russian Constitution established the joint jurisdiction of federal and regional governments over Indigenous small-numbered peoples (p. 37-38). Overall, the literature review of federalism and Indigenous peoples showed that Canada and the U.S. have centralized jurisdictions over Indigenous peoples, whereas in Russia, the authority to make laws in regard to Indigenous peoples is divided between the central and regional governments.

The next set of literature is about the role of the oil and gas industry in national and subnational policies of Canada, the United States and Russia. Sunley, Baunsgaard and Simard (2003) provide a theoretical framework, describing how the government can benefit from oil and gas extraction. For instance, governmental budgets can benefit from petroleum extraction, using production-based or profit-based instruments in order to collect revenues. Besides these tools, a government can also take an equity interest in extractive projects through a variety of different approaches, such as paying for its equity share in a future project, reducing taxation in exchange for shares and many others (p. 164). The taxation of oil and gas extraction could bring benefits either to federal or subnational governments. McLure (2003) recognizes a few types of assignments of oil tax revenue; these types mostly differ by resource ownership and tax legislation (p. 205-207). The right to tax oil and gas development can be beneficial for a subnational development only if the subgovernment has authority to regulate taxation on its lands, and/or owns the lands where the production is going on. There are some views that the oil and gas development in the Northwest Territories, Canada, was not so profitable for the territorial budget, because of the federal jurisdiction over ongoing extraction (Banta, 2006, p. 81-83; O'Neil, 1997, p. 150-151). In comparison, the budget of Alaska significantly benefited from

the oil extraction in the Prudhoe Bay due to the state ownership and control over the oil-producing lands (McBeath & Morehouse, 1994, p. 69-70; Rogers, 1999, p. 26). Since the amendments of 2005 in tax and subsurface legislation, oil-extractive regions in Western Siberia do not receive oil and gas profits (Kryukov & Tokarev, 2005, p. 27). Therefore, the literature review of the impact on oil and gas industry on national and subnational policies showed that Canada, the United States and Russia have different systems of tax regulation and land ownership. Oil and gas extraction contributes a great deal to the federal/subnational budgets.

The next set of literature is devoted to the legal status of Indigenous (tribal) organizations in each analyzed country. Many authors note that in Canada, the rights of Aboriginal groups to own and control traditional lands are strongly tied with comprehensive land claims agreements (Scott, 1993, p. 313; Macklem et al., 1995, p. 61; Elliott, 2000, p. 334). In order to define Aboriginal rights on claimed lands, the Government of Canada set up the process of comprehensive land claims agreements in 1973. Besides Aboriginal communities, this process usually involves federal and provincial/territorial governments (Alcantara, 2013, p. 15). The Aboriginal groups also have an inherent right of self-governance. This right of self-governance is related to occupation and use of their traditional lands, which is why the Aboriginal groups can include a provision on self-governance into the treaty-making process (Elliott, 2000, p. 334). In regard to Alaska, there are many studies about the regional and village corporations established by the Alaska Native Claims Settlement Act (ANCSA) in 1971. In accordance with ANCSA, the corporations received about 44 million acres of the land and about 1 billion dollars.

Besides owning the land, the corporations also have the right to own surface and subsurface resources on their lands (Bankes, 1983, p. 165). Some authors characterize the ANCSA corporations as "quasi-governments", because they are economic agencies that act as

political organizations (Morehouse, McBeath & Leask, 1984, p. 183). The Russian tribal organizations, *obshchinas*, have the right to apply to the federal, regional government or local municipalities in order to organize the territories for traditional nature use (Kryazhkov & Larchenko, 2012, p. 247). However, *obshchinas* cannot possess these lands - they can only use them for their traditional subsistence activities, such as fishing, hunting and so on (Osherenko, 2000, p. 718). Overall, the literature review about the tribal organizations in Canada, U.S. and Russia showed that while Aboriginal groups and ANCSA organizations have the right of land ownership, *obshchinas* in Russia can only use their traditional lands, but not possess them in the usual sense.

The last set of literature is about the impact of oil and gas development on Indigenous well-being. Although there is no large oil and gas development in the Mackenzie Delta, some authors examined the perspectives of the local Indigenous communities on the potential impacts of the future Mackenzie Gas Project. Justice Thomas Berger held public hearings with local Indigenous communities for his report "Northern Frontier, Northern Homeland" in 1977. His social and economic recommendations, based on the collected data, led to the delay of the project for ten years (Shadian, 2014, p. 93). Mason divided local Aboriginal peoples into two groups: those who support the project and those who do not. The positions of people who oppose the project can be explained in following points: 1) the industrialization of the region could affect the environment; 2) the residents of these lands will struggle with changes in social life there. At the same time, supporters of the project assume that despite inevitable changes in traditional livelihood, the development of the region will raise their living standard and improve quality of life in the Mackenzie Delta (Mason, Anderson and Dana, 2008, p. 177). Some authors note that the ongoing oil production in Alaska led to a change in cultural values of Alaska

Natives. Anders (1986) notes the adoption of ANCSA, and the following introduction of the oil economy in Alaska created two role models for the younger generations of Alaska Natives. The first one is the traditional role of a hunter and village leader, with traditional cultural values. The second one is the model of corporate Native, the person who is acquainted with the market rules, corporations, and big money projects. The hard choice between these two models caused cultural shock and marginalization among Natives. He also suggests that the frustrations of Alaska Natives about their ambitions, and their desire to find more meaningful lives could be a potential reason for the high rates of suicide among Natives (Anders, 1986). Leighton and Smith, cited in the article of Gary Anders, also emphasize the changes in values, ideologies, and living principles of Alaska Natives caused by the market economy (Anders, 1986). Helander-Renvall (2010), in her case study of the Nenets Autonomous District, Russia, notes positive changes in the life of local Nenets people related to petroleum extraction, such as development of communication and transport, increased demand for reindeer meat among oil workers, new jobs within the oil industry for eligible Nenets, and material, financial, and networking opportunities for local farms from the petroleum enterprises. Tuisku (2003) emphasizes the positive role of cash compensations from oil companies to the reindeer herding enterprises Kharp and Erv in the Nenets Autonomous District (p. 453-454). But, at the same time, there are negative impacts of oil drilling on the environment and animal populations, such as oil spillages, industrial waste, and negative influence on fish, plant populations, and the migration of reindeer,, and negative social impacts, which include alcoholism, drugs, and violence against women (Helander-Renvall, 2010, p. 202-205). Therefore, the literature review of the impact of oil and gas development on Indigenous well-being showed that negative and positive effects of drilling could be quite similar in each analyzed country.

1.7. Explanation of Method

In order to explore this question, one must ask whether any of these governments provides for participation in the policymaking process for Indigenous peoples. I propose that dialogue between governments, oil and gas corporations, and Indigenous peoples should be an essential part of any government that has formal recognition of Indigenous peoples in its territories.

Justice Thomas Berger, in his 1977 report "Northern Frontier, Northern Homeland," expresses his point of view about the importance of Aboriginal participation in the review of the Mackenzie Gas Project (Canada) in the following way:

> The North is a region of conflicting goals, preferences and aspirations. The conflict focuses on the pipeline. The pipeline represents the advance of the industrial system to the Arctic. The impact of the industrial system upon the Native people has been the special concern of the Inquiry, one thing is certain: the impact of a pipeline will bear especially upon the native people. That is why I have been concerned that the native people should have an opportunity to speak to the Inquiry in their own villages, in their own languages, and in their own way (Berger, 1977a).

Kryukov & Tokarev (2005) share the same point of view, arguing that the interests of Indigenous small-numbered peoples should play an essential role in oil and gas development in the Russian oil and gas extractive regions. They suggest that the Russian policymakers need to design special legislation that could provide effective cooperation between Indigenous small-numbered peoples, oil and gas corporations, and regional and federal governments (p. 166-168). They also note that the Russian government needs to change its political approach in regard to Indigenous peoples from paternalism to a partnership (Kryukov & Tokarev, 2005, p. 170).

Eicken, Ritchie, and Barlau (2011) argue that Indigenous knowledge from the Alaskan coastal communities could significantly contribute to the assessment and mitigation of potential environmental hazards in Alaska's coastal and offshore oil and gas development. For the purpose of using this knowledge, they suggest an active involvement of representatives from coastal Indigenous communities into the policymaking process about oil spill response and contingency planning (p. 597).

Although the Arctic Indigenous people in Canada, Russia, and the U.S. have relationships with varying levels of sovereignty with their governments, I argue that the needs and wants of Indigenous peoples are best protected by their own capacity to engage directly in policy-making. Hence, my research measures the participation of Indigenous peoples in the policymaking process provided by the government to evaluate whether they are legally protected better from the negative effects of oil and gas development where they have a stronger role to play in the development.

Evidence may be found in the doctrine of Aboriginal title governing former colonies of Great Britain, in particular, Canada and the United States. The adoption of Aboriginal title provided a legal foundation for Indigenous peoples to participate equally with other stakeholders in Arctic oil and gas development. This doctrine recognizes Indigenous peoples as the owners of their lands, not only as the users.

> How Indigenous peoples in northern Canada are now positioned in relation to energy development in terms of consultation, active participation and economic benefits is the result of a process of historic treaty-making and more recent negotiations over comprehensive land claims (Nuttall, 2010b, p. 195).

Russia does not identify Indigenous small-numbered peoples in the same way; thus, their capacity to protect their traditional lands from the negative externalities of drilling is lower in comparison with the Inuit peoples and Alaska Natives. Even if the Indigenous peoples of Russia have guarantees of legal protection of their lands and traditional activities, the lack of ownership of traditional lands weakens their position. The explanations of their disadvantages vis-à-vis the government will be a substantial focus of this thesis.

1.7.1. Comparative Studies: Federal Governments and Subgovernments

The roles that subgovernments play in each national system are important for understanding how Indigenous people may be affected by and may influence oil and gas decision-making. An essential feature of the federal system of government is a division of powers between central and provincial (regional, state) governments. It means that there are three powers: powers given exclusively to the central government, then, powers granted exclusively to the subgovernments, and powers that are under the control of joint jurisdiction of both levels of government (Norman, 2006, p. 106-107). Hence, federalism creates multiple levels of autonomous decision-making authority (Kahn, 2002, p. 23). Multilevel governance can provide some benefits for minorities such as: 1) control of cultural and educational policies given to minorities (not only ethnic, but also cultural and religious); 2) pluralism and democracy through the establishment of self-governance to minorities; 3) economic benefits such as existence of a local market and national market in subunits; 4) deliberations between the center and periphery, which provide a more adaptive form of the government (Kempton, 2001, p. 202). From the perspective of federalism, centralization means the level of authority of central authorities in the work of subgovernments. High centralization in a federation can significantly reduce the level of autonomy of subnational governments (Kahn, 2002, p. 31-32). Depending on the level of

centralization/decentralization, the subgovernmental policy can be similar or different from the central pattern.

Why does the dynamic of federal-subnational relationships matter for Indigenous participation in oil and gas development? It matters because in the federal states, besides the central power, there is another political actor in a relationship with Indigenous communities– the subnational government. It is also important because in federal states Indigenous peoples may have more interactions with subgovernments than with the central government. Depending on certain circumstances, Indigenous-subnational government relationships could be controversial. On the one hand, there could be a competition between regions and Indigenous peoples for jobs and incomes in resource extraction. On the other hand, subnational governments and Indigenous communities could have mutual interests, such as the protection of the natural environment in areas of oil and gas drilling (Corntassel & Witmer, 2008, p. 23-24). The circumstances of their interactions could differ depending on various factors, such as the jurisdiction over Indigenous peoples, distribution of oil and gas incomes and degree of autonomy of subnational governments.

Thus, in my study, I focused on the federal-subnational relationships in each of these countries, with particular emphasis on: the capacity of subnational legislatures to adopt their own legal regimes in regards to Indigenous peoples and oil and gas extraction, on the capacity of Indigenous organizations to directly interact with subnational governments, and also on the federal-subnational distribution of oil and gas revenues from extraction activities.

In the case of oil and gas policy, the lack of capacity of the central government to understand the needs and problems of the Arctic region is very common. All of these countries, during at least one point, have needed to find a compromise between the protection of Indigenous

livelihoods and oil and gas extraction in the Arctic. Lisa Murkowski, Alaska's senior delegate to the U.S. Senate, expressed her concern about Arctic development regarding Alaska.

> Let's recognize the benefits as well as the challenges that come from being an Arctic nation and remember our responsibility to those who live in the region... Let's not let the rest of the world rush to the Arctic frontier without us" (Murkowski, 2014, November 19).

Similarly, Alexander Noviuhov, the vice-president of RAIPON, expressly noticed the lack of attention of the federal government to the valuable experience of cooperation between Indigenous peoples and the subnational governments within the Russian Arctic. He said, "there is the vigorous collaboration between the governmental authorities and Indigenous small-numbered peoples in Khanty-Mansi Autonomous District, Sakha Republic, Yamal-Nenets Autonomous District, and Nenets Autonomous District. This experience should be further spread" (Alexandrovich, 2015, March 24). Therefore, the subnational and federal governments may have different views in regards to oil and gas policy and Indigenous peoples. It could be that the subnational legislatures can help to improve the national legislation by adopting their policies locally and, then, sharing their experience with other subgovernments in case of successful implementation.

The comparative method provides an opportunity for political scientists to discuss specific phenomena considering different social and historical backgrounds. From a comparative perspective, these specific phenomena can be separated from a cultural background (Macridis, cited in Pennings, Keman & Kleinnijenhuis, 1999, p. 24). Pennings, Keman & Kleinnijenhuis (1999, p. 25) provide the guidelines for researchers to decide whether the comparative method is appropriate for their studies. First, one needs to formulate the research question. Second, it is

necessary to determine the theoretical concepts and to check whether or not they can be compared. The selected countries should have both shared and non-shared attributes (Lor, 2012, p. 15). Finally, the researcher must choose the logic (the approach) of comparative method in order to find an answer to the research question.

The research question of this study is to what extent do the governments of Canada, the United States and Russia affect the relationships between the petroleum extractive industries and Indigenous peoples of the Arctic? In accordance with the research question, this study is aimed to analyze the governmental impact on the relationships between the resource extraction industries and Indigenous peoples in Canada, the United States, and Russia – which arrangements afford the Indigenous people the greatest protections of their interests? The literature review shows that all of these countries have at least three common features: 1) federal system of government; 2) resource extraction in the Arctic; 3) Indigenous peoples in the Arctic. But, at the same time, there is a different policy outcome: Russian Indigenous peoples lack protection from the negative externalities of oil and gas extraction. Hence, these specifications are appropriate to compare.

The third requirement for the use of comparative research is a choice of the approach of the method. There is a distinction between the "most similar" systems design (MSSD) and the "most different" systems design (MDSD) in comparative research. The main difference between these two comparative approaches is that MSSD uses the Method of Difference, whereas MDSD is oriented on the Method of Agreement. Both are methods of elimination (Mill, 1843, p. 456). The MSSD approach is used if a researcher needs to analyze a large number of cases/systems similar in context, but only with a few different variables; or, instead, use a small number of cases/systems with a large number of variables (Pennings, Keman & Kleinnijenhuis, 1999, p.

45). Mill (1843) explains the MSSD principle as "If an instance in which the phenomenon under investigation occurs, and an instance in which it does not occur, have every circumstance save one in common, that one occurring only in the former; the circumstance in which alone the two instances differ, is the effect, or cause, or a necessary part of the cause, of the phenomenon" (p. 455-456). When comparing a few countries, they need to be similar by many factors/variables, except the particular one, which helps to determine the effect of the particular policy (Lor, 2012, p. 15). Lor (2012, p. 15) gives an example of a few former British colonies, which share many common features, except one of them, has a lack of literacy. As a result, this country has a different outcome from the others – no local public libraries. In this case, low literacy caused an effect – the lack of public libraries.

The MDDS approach or the Method of Agreement uses the opposite logic. According to Mill (1843), "if two or more instances of the phenomenon under investigation have only one circumstance in common, the circumstance in which alone all the instances agree is the cause (or effect) of the given phenomenon."(p. 454) An example, provided by Peter Lor (2012), Nordic, Latin American, and former British colony countries have many differences, except one common feature – a high level of literacy. This similarity causes the common outcome – local public libraries (Lor, 2012, p. 16).

In this particular study, Canada, the United States and Russia are mostly viewed from the perspectives of similarities: 1) federalism; 2) the Arctic location; 3) oil and gas extraction; 4) Indigenous peoples in the North. There is also a different outcome – low level of protection of Indigenous peoples in Russia. Then, the research question is aimed to recognize which governmental policy (cause) affected the different outcome in the Russian case (effect). Hence, due to the many common attributes in the analyzed countries, and the one different outcome, the

MSSD approach was considered most appropriate. Thus, in order to answer the research question, it is necessary to analyze which feature caused the different outcome.

Table 1.1. Research Framework for Comparative Analysis

Independent variable	Country 1	Country 2	Country 3
	A	A	A
	B	B	B
	C	C	C
Key explanatory factor(s)	X	X	Not X
Dependent variable	Y	Y	Not Y

Source: Landman, 2003, p. 28.

1.7.2. Dependent and Independent Variables

In order to answer the research question, it is necessary to determine what governments actually do to affect the oil and gas industry and Indigenous peoples. The policies are usually reflected in the national legislation. Thus, the national laws could serve as indicators of governmental actions. Then, the impact of the government into the relationships between the oil and gas industry and Indigenous communities can be the best shown by the measuring level of legal protection of Indigenous communities from the resource extraction. Therefore, the degree of legal protection of Indigenous peoples from negative externalities of oil and gas extraction is a dependent variable of this study. It should be noticed that although this study is aimed to compare the legislations of three countries, the research does not address their implementation.

The impacts of the legislations on particular subjects, such as the impact on well-being of Indigenous peoples of the Arctic, are a matter of separate study.

My independent variables are several. Each of these variables will be used in order to explain the variations in types, content and efficacy of the key legislation in Canada, the United States, and Russia.

The first independent variable determines how much the governmental system of each country is centralized or decentralized in regard to the formation of Indigenous policy. The federal system of government specifies the division of powers between the central governments and subgovernments. There is a list of policy areas that are under federal regulation, which means that these particular policies are the same all over the country. For instance, it could be environmental policy. There is also a list of policies, which are regulated by the subgovernments. Each subgovernment has its own regulations, and it makes policies different from region to region. As an example, educational policy can be different in each region. The rest of the policies could be under the joint jurisdiction of both federal and subnational governments, such as taxation policy. Highly centralized countries have more federal influence on subgovernments, and as a result, regional policies can repeat the federal pattern. In contrast, decentralization suggests more autonomy and independence for subgovernments in the policymaking process.

The degree of centralization/decentralization of the formation of the Indigenous policy determines which level of the government makes decisions in regard to Indigenous peoples and their relationships with oil and gas companies. Assuming that the subgovernments of the Arctic regions are highly knowledgeable about the needs and wants of their Indigenous peoples, because they live side by side, the high decentralization of Indigenous policy would protect Indigenous communities better than the federal one.

The second variable recognizes the level of dependency of the government on oil and gas revenues. Each analyzed country has large petroleum deposits in the Arctic regions. Resource extraction is usually considered highly profitable and generates a high volume of direct or indirect revenues. However, oil and gas drilling is quite harmful to the environment and for traditional livelihoods and subsistence of the Arctic Indigenous peoples. Hence, it is hard for the policymakers to have the cake and eat it too– to receive profits from the industry and, at the same time, to preserve the nature and the way of life of Indigenous peoples. Presumably, the governments with the high dependence on oil and gas profits would choose the industry interests, whereas others, with less dependence on oil and gas economies would attempt to protect Indigenous peoples and nature. In order to define the level of the dependence, the statistical data of national or/and regional economies is analyzed.

The third independent variable examines the degree of autonomy given to Indigenous (tribal) organizations in Canada, the United States and Russia. The tribal organizations in this context are viewed as official legal entities, which are formed in accordance with national legislation. I measure their autonomy by their ability to impact political decisions in oil and gas development, and also their capacity to participate as full-fledged partners in negotiations with the government and corporations.

Although each of the analyzed countries fulfilled the rights of Indigenous peoples to be self-governed, the tribal governments could have extensive or limited rights and authorities varying from country to country. The autonomy of tribal organizations usually tied with their capacity to operate on lands of a traditional use of Indigenous peoples. Following this logic, Indigenous organizations with higher autonomy have more capacity to protect Indigenous peoples from resource extraction.

1.8. Hypotheses

1) Due to the better understanding of the needs and wants of Indigenous peoples by subnational governments, countries with decentralized jurisdiction over Indigenous peoples and subsurface resources have the better legal protection of Indigenous peoples.

2) Because of the concurrent jurisdiction between federal and regional laws, regional parliaments can preempt federal laws in the area of legal protection of Indigenous small-numbered peoples and their relationships with subsurface users.

3) The high dependence of the governmental budget on oil and gas profits leads to less legal protection of Indigenous peoples in regard to oil and gas extraction.

4) If more authority is given to tribal (Indigenous) communities, they will obtain better legal protection for them within their relationships with oil and gas companies.

The effective legal protection of Indigenous peoples from the negative consequences of oil and gas extraction is strongly tied with their own choices to decide what could work the best for them, provided that they have the political opportunities and capacity to do so. Thus, the involvement of Indigenous communities in the decision-making process means the best legal protection for them. Because the goal of this study is to discover how the different levels of government affect Indigenous peoples in the conditions of oil and gas extraction, the validity of these four hypotheses would mean that decentralization of authority over Indigenous policy increases the capacity of Indigenous peoples to participate in the policymaking process, and thereby improves their protection; whereas a high level of centralization provides less participation, and, therefore, decreases this possibility.

1.9. Expected Outcomes

The following results are expected in this research:

1) Decentralization in federal countries improves the legal protection of Indigenous peoples;

2) Regional legislation expands the participation of Indigenous peoples in the decision-making process regarding oil and gas extraction in their lands;

3) The federal governments that benefits more from oil and gas extraction have less interest in the protection of Indigenous peoples;

4) The higher degree of autonomy given to Indigenous (tribal) organizations helps them better protect the interests of their communities.

Chapter 2. The Roles of the Federal Governments in Indigenous Policy

Chapter two describes the development of the definitions of indigeneity in Canada, the United States (Alaska) and Russia, and then explains the policies of each federal government in regard to Indigenous peoples. In relation to hypothesis A, the extent of centralization or decentralization, and the definition and government policies are significant.

2.1. What Does "Indigenous" Mean?

2.1.1. International Definitions of Indigenous

An official definition of indigeneity was accepted by the United Nations Working Group for Indigenous Peoples in 1974 and then amended in 1983. This definition contained the following features that were recognized as inherent to Indigenous peoples:

(a) Their ancestors were in the territory at the time when the other groups of different cultures or ethnic origin arrived there;

(b) Because of their isolation from other parts of the country, their customs and traditions are authentic, and inherited from their ancestors and could be characterized as Indigenous;

(c) They are placed under a governmental structure that has different national, social and cultural characteristics from their own culture (cited in Sandberg McGuinne, 2015, March 30).

Later, the International Labor Organization 169 Convention (1989, cited in Sandberg McGuinne, 2015, March 30) defined Indigenous peoples as:

"Tribal peoples, whose cultural and socioeconomic conditions are different from the national community; whose status is determined by their own customs or traditions or by special laws or regulations; peoples who are descendants of the populations which inhabit the lands at the time of conquest or colonization"(cited in Sandberg McGuinne, 2015, March 30).

Furthermore, the World Bank identified Indigenous peoples in 1991 by the following characteristics:

a) They are closely attached to ancestral lands and natural resources of these territories;

b) They self-identify and are identified by other people as a distinct nation;

c) They speak their Native language, different from the national language;

d) They have their own customary social and political institutions; and

e) They are mostly oriented toward traditional subsistence production (cited in Sandberg McGuinne, 2015, March 30).

However, these definitions do not completely encompass all features of Indigenous peoples worldwide. For instance, in some states Indigenous peoples are the majority. None of the countries compared in this paper adopted the ILO Convention. There are no uniform, detailed definitions of indigeneity that could be accepted on the international level (Richardson, Imai, & McNeil, 2009, p. 12-13). Nevertheless, some concepts from international understandings of indigeneity such as self-determination, self-governance, and land recognition have been reflected in the national legislation of Canada, the United States and Russia as basic rights of their Indigenous peoples. A review of the entire history of Indigenous peoples in each country is beyond the scope of this thesis due to its Arctic focus. Furthermore, in Canada and the U.S. Arctic Indigenous peoples fall under some different agreements than the more southern Indigenous inhabitants of these countries.

2.2. The Indigenous Peoples of Canada, the United States, and Russia

In Canada and the U.S. Arctic Indigenous peoples fall under some different agreements than the more southern Indigenous inhabitants of these countries. Below I provide enough

general history so that the federal and subnational policies regarding Indigenous people are clear, but I remain focused on those peoples of the Arctic.

2.2.1. Canada

The Inuit people live mainly in the northern part of Canada, including northern Labrador and Quebec, the High Arctic (within the Arctic Archipelago), the western Hudson Bay and the Barren Grounds, the central Arctic coast, and the Mackenzie Delta (Shadian, 2014, p. 27). They are a distinct category from other Aboriginal people of Canada, including First Nations and the Métis. The Inuit people were officially recognized by the Constitution Act 1982. Section 35 (1) of this Act provides that '[t]he existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed'. Section 35 (2) recognizes 'the Indian, Inuit and Métis people of Canada' (Standing Senate Committee on Aboriginal Peoples, 2013, p. 8).

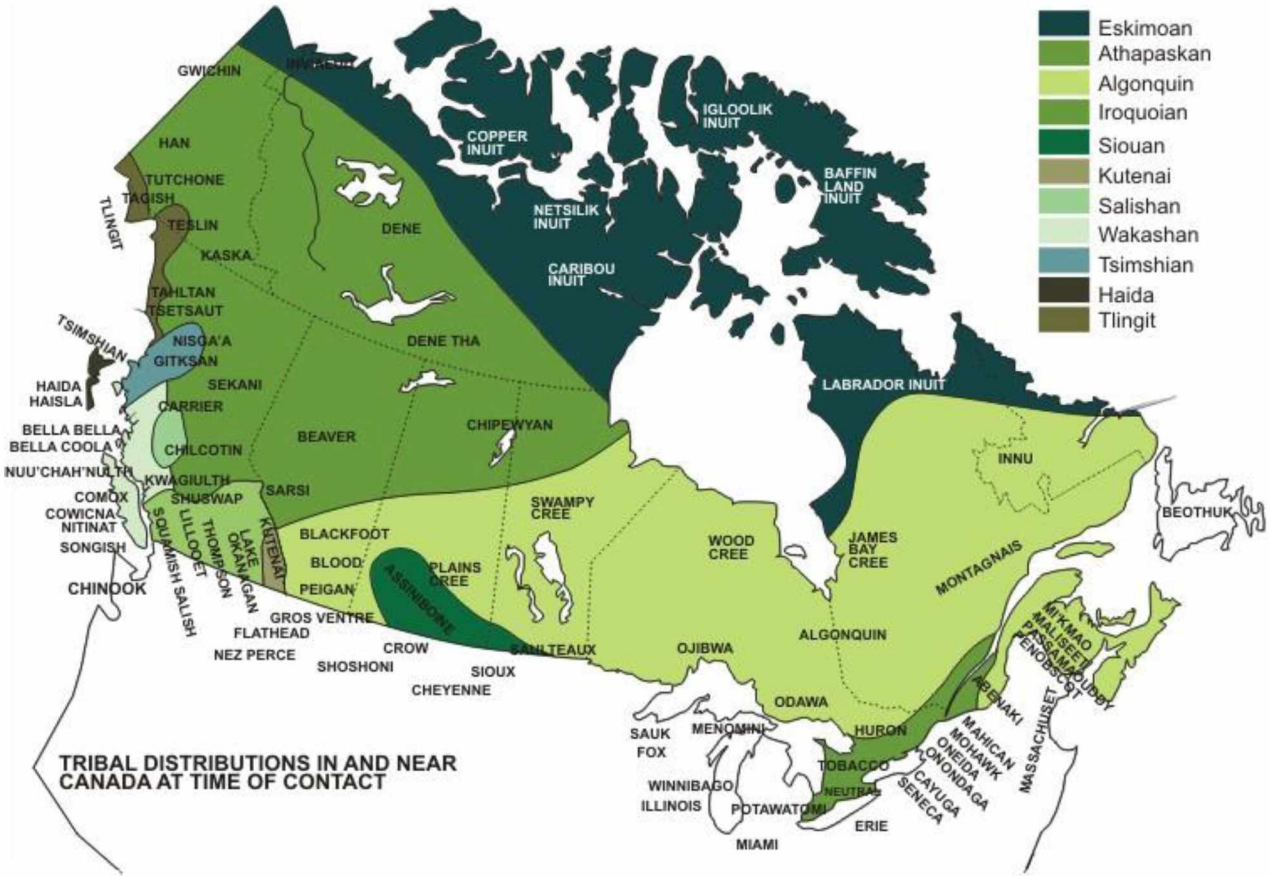

Figure 2.1. Distribution of Aboriginal Peoples across Present-Day Canada at Time of First Contact (Oblates in the West, no date)

The history of the relationship between the federal government of Canada and its Indigenous inhabitants started with the signing of the British North America Act in 1867 (BNA Act). This document made the federal government responsible for providing social services for the Native people of Canada. The Indian Act of 1876 authorized federal 'Indian Agents' to 'oversee Indians' activity in order to help them to adapt to non-Native society. The Indian Act defined who was an Aboriginal person legally, and who could therefore receive benefits under this Act. As more and more new settlers were arriving from Europe, it was decided that Aboriginal people would have to cede their lands and become less visible. Treaties with the Crown demanded surrender of Aboriginal lands across Canada – from the borders of Ontario to the borders of British Columbia, though much of British Columbia remains under Aboriginal title. The Aboriginal peoples viewed these agreements as peace treaties. In accordance with the agreements, the Queen was supposed to "care for her people well", which meant to provide health, education, and welfare services (Ryan, 1987, p. 316).

Although the Inuit people were exempt from the Indian Act, some of its provisions affected them as well. For instance, the federal government still had authority over Inuit issues, even if the Indian Act did not directly mention this jurisdiction. In 1939, the Supreme Court of Canada issued a decision *Reference Re: Eskimos*, including the Inuit people within the scope of the Indian Act (Shadian, 2014, p. 39-40). The BNA Act, the Indian Act, and further policies were based on the understanding of the Natives as people who 'were stuck in a pre-modern condition' (Manore, cited in Shadian, 2014, p. 40).

According to one of these policies, the Eskimo Disk List System, which was adopted in 1941, each Inuit received a four-digit number, which was engraved on a disc to be worn around the neck (Smith, 1993, p. 41; Innuksuk, cited in Shadian, 2014, p. 40). This process was

accomplished by giving 'family names' and 'district designation'. Using this policy, the government attempted to keep track of each Inuit and later, attempted to administer government programs designed for the Inuit (Shadian, 2014, p. 40). The Eskimo Disk List System policy was not only used for the identification of the persons who belonged to the Inuit people, but also created criteria for their status generated entirely within a bureaucratic framework. Although the criteria designed by the Canadian government were based on racial descent and included marital status, cultural identification ("follows an Inuit way of life"), self-identification ("wishes to follow the Inuit way of life"), and acceptance of tribal members, the final decision was always made by the administration. Smith (1993) called the Inuit status created by this policy an "inauthentic ethnic category." In other words, the government forcefully decided who is qualified to be an Inuit, instead of relying on tribal members and self-determination (p. 64-65). Hence, the disc around the neck also automatically identified the legal status of the owner. Smith gives an example of a man who was issued a disc as an Inuit, but subsequently, the disc was taken from him, as his father was not Inuit. At this time, he had lived most of his life as an Inuit, and wished to continue living this way. He asked for the disc to be returned, as he lost opportunities related to the legal status of the Inuit people (Smith, 1993, p. 59).

The post-WWII years experienced several efforts at decolonization throughout the world and influenced the views of the Canadian government. In 1944, Ottawa issued the Family Allowance program for all Canadians. According to the terms of this policy, Inuit people could receive subsidies for the education of their children, if they settled near a trading post, or sent their younger children to residential schools. Later, after the Second World War, the Canadian government forced Inuit to move to permanent settlements in order to make social welfare accessible. By the mid-1960s, the Inuit population was concentrated around these settlements

(Shadian, 2014, p. 42). Finally, Canada 1982's Constitution Act recognized the Inuit people as Aboriginal people, distinct from First Nations people, giving them an opportunity to make claims on their lands and self-governance.

Inuit political associations began forming in the 1970s, and their rise was caused by several factors: 1) failure of the White Paper (1969);[1] 2) discovery of the Prudhoe Bay oil deposit in Alaska, which aided mobilization towards Native land claims not only in Alaska, but also in Northern Canada; 3) the *Calder v. British Columbia* decision, which recognized the existence of Aboriginal title in Canada (Zellen, 2008, p. 22); 4) and the James Bay and Northern Quebec Agreement (1975), the first land claims settlement agreement of the Canadian Inuit. So, all these factors stimulated the political activity of the Inuit activists for their lands and self-governance. The Indigenous nationalist movement contributed to Nunavut's designation as a territory in 1999. It has similarly encouraged the struggle of Soviet ethnic elites for the autonomy of the ethnic republics. The autonomy of Greenland, when the Greenlandic Inuit were granted self-determination through the establishment of Greenland Home Rule in 1979 was also a result of an Indigenous national movement (Shadian, 2014, p. 78). Also, Loukacheva (2007, p. 30) notes, that during the Nunavut process, the Inuit people were highly supported by the dominant society, as well as the larger Indigenous peoples of the Soviet Union. Nunavut received "enormous advantages given by support in non-aboriginal society" (EU Ministerial Conference on the Northern Dimension, cited in Loukacheva, 2007, p. 30). However, although the creation of Nunavut was a result of Indigenous movements, formally it was never recognized as an

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[1]In order to assimilate Aboriginal affairs into the mainstream, *The White Paper on Indian Policy* (1969) rejected Aboriginal land claims and established regular provincial agencies for Aboriginal peoples instead of specialized bodies. However, later, this Act was cancelled under the provisions of the *Calder's* decision (Indigenous Studies Program, University of Melbourne, Australia, cited in Zellen, 2008, p. 22-23).

Indigenous government. De-facto Nunavut is the public government in a territory with an Inuit majority (Loukacheva, 2007, p. 39).

Therefore, historically, the Canadian Inuit have close relations with the federal government. Their land claims movements led to the creation of Nunavut, a non-ethnic Native-governed territory, considered a subnational government. The federal relations between provinces and territories will be discussed in depth in Chapter 2.

2.2.2. Alaska Natives in the United States

Alaska Natives, the Indigenous population of Alaska, include several distinct cultural groups, such as Inupiaq, Yupik, Aleut, Eyak, Tlingit, Haida, Tsimshian, and Northern Athabascan people. Unlike many Native Americans, Alaska Natives were not conquered and forced off their lands onto reservations. This is in part because many Americans assumed that Alaska did not have lands worth taking that would require such a policy, until the discovery of mineral resources. Similarly to the Canadian government, the U.S. federal government also tried to 'civilize' Alaska Natives, to assimilate them into Anglo-American society (McBeath & Morehouse, 1994, p. 97).

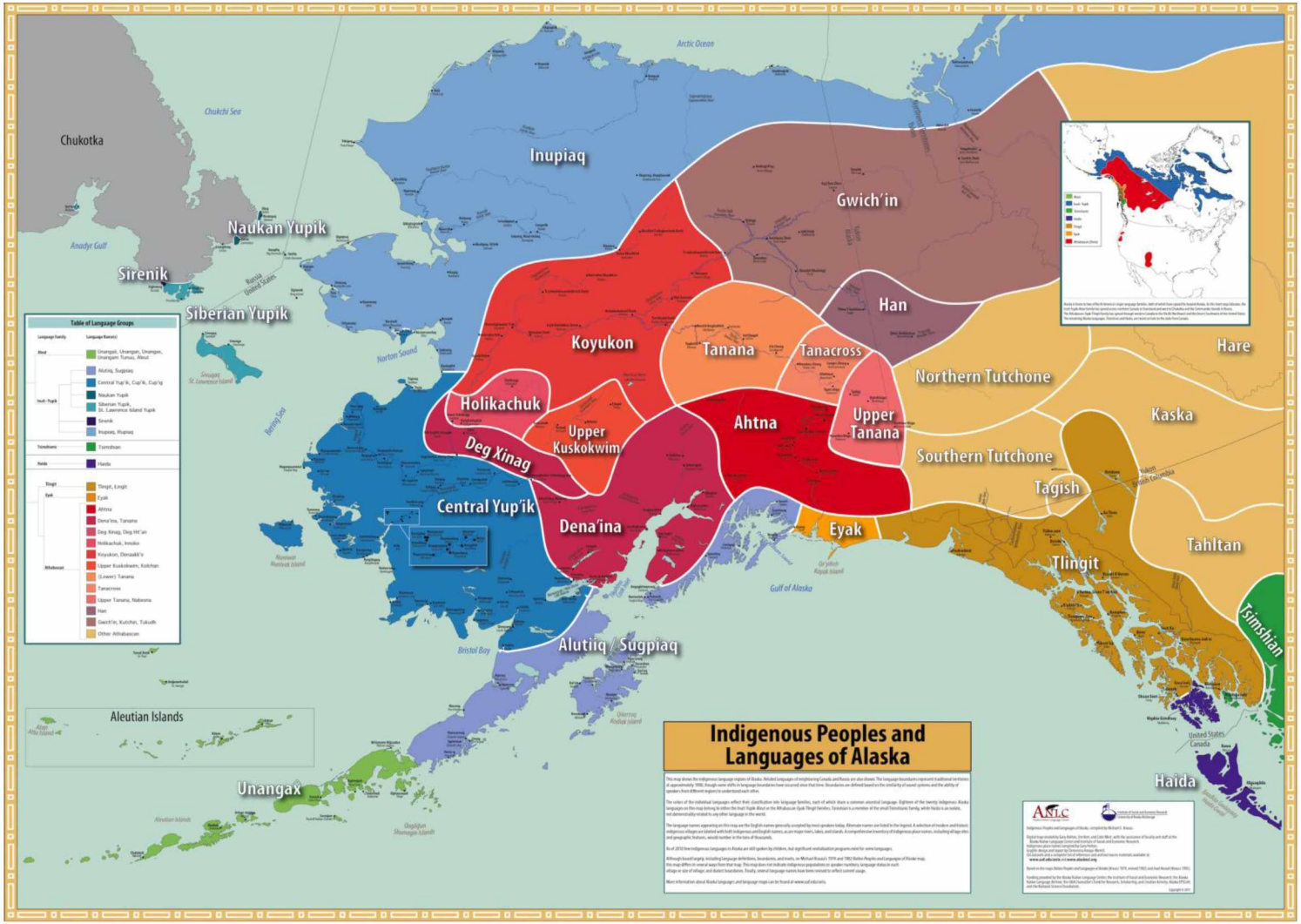

Figure 2.2. Indigenous Peoples and Languages of Alaska (Alaska Native Language Center, University of Alaska Fairbanks, 2011).

However, the federal government did not look at Alaska Natives as dependent communities. After the purchase of Alaska from the Russian Empire, Article III of the 1867 Treaty of Cession provided a distinction between "uncivilized tribes" and the other "inhabitants of the ceded territory." The "uncivilized" category was determined either by the Russian classification, or by the U.S. law. Although federal Indian law was applicable to Alaska Natives, their legal status was unclear until the beginning of the twentieth century. Many federal statutes, such as the Indian Trade and Intercourse Act, were not applied to Alaskan lands until 1948. The 1884 Organic Act equated Native possession with non-Native possession, depriving Alaska Natives from making claims of Aboriginal title. Furthermore, because of the lack of a separate Indian agency in Alaska, the Department of the Interior held that the federal government treats Alaska Natives differently than other Native Americans. Finally, in 1936, Congress issued the Indian Reorganization Act (IRA) in regards to Alaska, which generally equated the legal status of Alaska Natives to Native Americans (Case & Voluck, 2002, p. 6-8).

The amendments to the IRA aimed to place land ownership of Alaska Natives and governmental power on the same level with Native American reservations. By 1941, the Department of the Interior organized seventy-five Native groups under the IRA amendments. These amendments were intended to identify Alaska Native communities with the lands that they occupied. The organization of Alaska Native governments made their status equal to Native governments generally. By the time of Alaska's statehood, both the courts and the Congress recognized the historical equality of Alaska Native governments' internal authority as Native governments in the Lower 48. However, despite the clarification of the status of tribal governments in Alaska, the territory subject to their jurisdiction was not clearly identified. Even though the IRA governments could deliver social services to their residents, they could not

provide police, tax, or exercise other authority, simply because of the lack of clearly defined boundaries. Hence, the IRA Act was not enough to regulate the life of Alaska Natives (Case & Voluck, 2002, p. 15-16).

The combination of two factors: 1) the discovery of oil at Prudhoe Bay in 1968, which led to the U.S. Congress' recognition of the urgency of solving the problem with Indigenous land claims in Alaska and 2) the civil rights revolution in the 1960s that provided the support of minority voices and members of he dominant society, led to the passage of the Alaska Native Claims Settlement Act in 1971 (Zellen, 2008, p. 32-33). The adoption of ANCSA significantly impacted the relationships between the Indigenous peoples of Alaska and the government. The amendments to ANCSA in 1988 legally fixed the equality of Alaska Natives and other Native American groups to federal Native programs. However, the legal status of tribal governance in Alaska is not equal to the rest of the country. As the U.S. Supreme Court has interpreted, ANCSA eliminated Indian Country in most cases, so tribal governments in Alaska are sovereign without territorial reach. However, the tribal governments in Alaska are still able to provide social services to the residents of their communities (Case & Voluck, 2002, p. 32-33).

2.2.3. Indigenous Small-Numbered People in Russia

According to the All-Russian Population Census of 2010, Russia is home to more than 194 ethnicities (All-Russian Population Census, 2010). The definition of indigeneity given by the Declaration on the Rights of Indigenous Peoples could apply to many of them, including those who live in the North.

Regardless of the existence of larger Indigenous groups in the Arctic, such as the Sakha, Komi, and Buryats, the legal category of indigeneity in Russia recognizes only: "the peoples living in the regions of the North, Siberia, and the Far East on the territory of traditional

residence of their ancestors, maintaining traditional lifestyle, economy, and trades; numbering less than 50 thousand people, and considering themselves distinct ethnic communities" (Federal Law "About Indigenous Small-Numbered Peoples", cited in Fondahl, Lazebnik, Poelzer & Robbek, 2001, p. 112).

Although most of the Siberia was attached to the Russian Empire in the sixteenth and seventeenth centuries, the government began to consider more "supple and pragmatic" policy only in the times of Catherine the Great. The political views of Catherine the Great, originally a Prussian princess, were strongly tied with the Enlightenment era when the transition to a sedentary lifestyle was considered as a step in social evolution. The nomadic non-Russian natives in Siberia were differentiated from Russians in the eastern part of Russia (Slocum, 1998, p. 178).

However, the first attempts to regulate the status of Siberian nomads started after Catherine's death, when the governor-general Mikhail Speranskii returned to St. Petersburg after his service in Siberia. Speranskii initiated this project in 1821 and finished in 1822. The Decree About the Governance Over Aliens divided aliens into three categories: settled, nomadic and wandering. The settled aliens were considered 'civilized' in the same way as the general population. Thus, they obtained the same rights and responsibilities and paid the same taxes (Slocum, 1998, p. 179). Also, according to the Decree, nomads paid a fur tax (iasak) and local taxes; the wandering aliens paid only local taxes. The traditional tribal governance of nomadic and wandering aliens was introduced as a new structure of governmental institutions (Slocum, 1998, p. 180). Despite their settled status, the Jewish people were also categorized as 'aliens', because of their non-Christian religious identity. Unlike the eastern aliens, the Jews could not change their 'alien' status by their initiative (Slocum, 1998, p. 183).

Overall, it is hard to say that the Russian Empire recognized Indigenous peoples as a legal category. The term 'inorodtsy' does not mean 'Native', or 'Indigenous', but, rather, it has a negative connotation related to 'other', 'alien', 'from another clan', or even 'foreign'. This perspective does explain why the Jews were included in this category. Although the Decree fixed only one criterion for belonging to 'aliens' – a settled way of life -- several other factors also determined this status. It could be language differences (although Poles, Estonians, Lithuanians were not Indigenous in general understanding, they spoke their native languages besides Russian), religion (Jews were non-Christians), and ethnicity (Siberian Natives were not Slavic). Moreover, even Ukrainians were often classified as 'aliens', unofficially. These circumstances create confusion in the concept of indigeneity in the Russian Empire. Why were all these ethnicities included in the same category? It seems like the Decree introduced rather non-Russian categories of partials rather than defining the Indigenous status. Slocum (1998) argues that the reason for this separation of non-Russians from the regular population was a fear of possible threats of attacks on Moscow, which still was a part of an ancient memory of Russians. The language, religion, and ethnic differences of non-Slavic Russians were perceived as foreign elements in the political body (p. 190).

Therefore, the Russian Empire gave Indigenous peoples special tax status as 'aliens.' The Decree About the Governance Over Aliens initiated by Speranskii mostly served purposes of taxation, without any recognition of pre-existing rights of Indigenous peoples to possess their lands. This legal position of the Russian Empire is absolutely different from the point of view of the British Crown, which recognized the pre-existing interest of Indigenous peoples of North America in regard to their "Hunting Grounds." However, it also needs to be said that the Royal Proclamation Act was signed because of "the greed which hitherto some of the English had all

too often demonstrated in buying up Indian land at low prices." (Elliott, 2000, p. 29). There were not any reports about the same behavior of the Russian settlers at the same period.

The official recognition of "indigeneity" began in the Soviet Union, when the government identified 26 ethnicities ('small people of the North') as people who needed special protection and aid because of the danger of extinction. In addition to the requirements for indigeneity mentioned above, the Soviet government included a criterion of 'backward' socioeconomic development. According to Marxist ideology, socioeconomic development of humanity included several stages, and socialism was the most desirable one. Thus, the state aimed to protect these people in order to stimulate their 'leap to socialism.' After the collapse of USSR, the Russian government changed this criterion and replaced it with 'self-identification.' The Russian government regularly maintains the official list of small-numbered peoples. Unlike Canada and the U.S., Russia does not practice the use of language requirements, blood quantum, or acceptance by other members of the Indigenous group as legal requirements for being considered as Indigenous (Fondahl & Poelzer, 2003, p. 112-113).

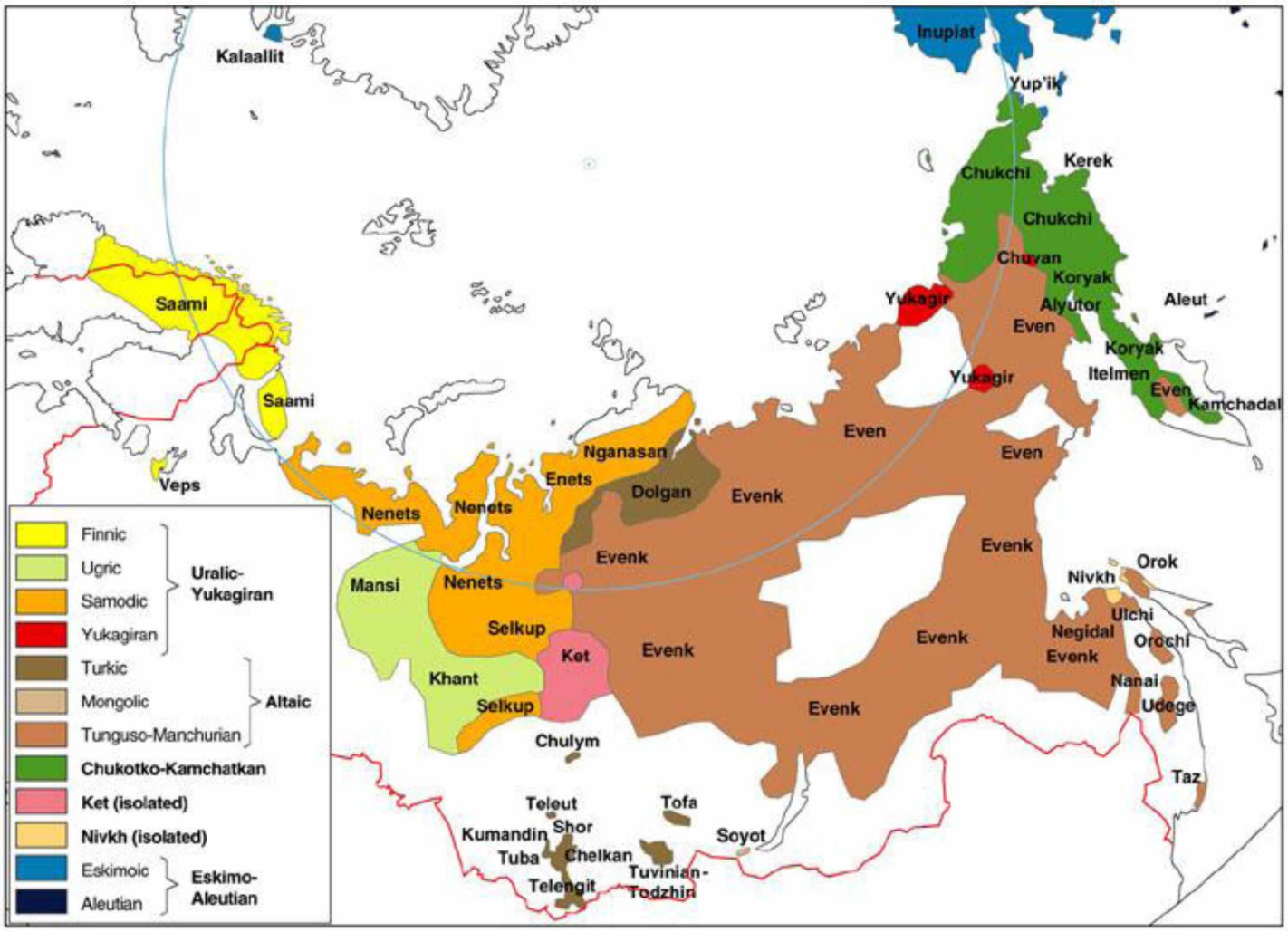

Figure 2.3. Indigenous Small-Numbered Peoples of Russia (Norwegian Polar Institute, 2005).

2.3. The Relationships between Indigenous Peoples and Their National Governments in Canada, the United States and Russia

2.3.1. Canadian Federalism and Aboriginal Peoples

The history of Canadian federalism begins in 1867, when the British Parliament issued the British North America Act (BNA), giving the Canadian government the ability "to make Laws for Peace, Order, and Good Government" (Thompson, 2012, p. 75). The most notable feature of the Canadian government is the combination of the British heritage, which is the Westminster model, with federal principles (Burgess & Gagnon, 1993, p. 84). The founders of the Canadian Confederation viewed the new federation as an analogue of relationships between the British Crown and the colonies, and they attempted to create the same system of relationships between the Canadian Dominion and provinces with limited self-governance. The main purpose of the future federation was the economic development of the regions facilitated by interregional railways. The Canadians decided to choose a different way of development from their southern neighbor, the United States, which strengthened both the local and the state governments and supported private enterprise. The federal government of Canada was supposed to stimulate economic growth, and powers were centralized (Watts, 1987, p. 772). Another British political tradition that Canadians preferred to follow was the parliamentary system, particularly the relationship of executive power to the legislature. Hence, power is centralized in Parliament (Watts, 1987, p. 773).

Canada has thirteen subnational governments: ten provinces, along with another three jurisdictions known as territories. Like the provinces, the territories can elect their own legislatures and have premiers who represent them. However, the territories have less independence than provinces, because they only have access to powers delegated to them by the

federal government. However, in recent times, the Canadian territories are taking more federal powers; for instance, after ten years of negotiations, Yukon was granted control over its natural resources (Thompson, 2012, p. 126). The territories are more dependent on federal transfers than provinces. For instance, the Government of Nova Scotia will receive $3 billion in 2014-2015 (Department of Finance Canada, 2015a), accounting for about 33 percent of its revenues for that year, whereas the Government of Yukon's federal transfer will be $897 million, accounting for about 74 percent if its revenues (Department of Finance Canada, 2015a) (Parker, 2014, p. 80).

Unlike the United States, the Canadian government decided to call Canadian sub governments 'provinces' rather than 'states.' Though the provinces have a basic list of authorities such as local government, property, social welfare, health care, and education, they have had restricted by British North America Act (the BNA Act of the Constitution Act) in exclusive rights, such as the rights related to their cultural identity. Hence, the term 'provinces' was used to explain the periphery as the rural areas outside the center, whereas American 'states' or Russian 'republics' denote some amount of sovereignty (Thompson, 2012, p. 98).

Figure 2.4. Provinces and Territories of Canada (Her Majesty the Queen in Right of Canada, Natural Resources Canada, 2006).

However, the attempts of founders to design the provinces to be weaker than American states failed, and some authors argue that nowadays the Canadian provinces are more powerful than are American states (Thompson, 2012, p. 98). Despite the intent of the Fathers of Confederation to design a highly centralized federation, the Canadian constitutional system has been highly decentralized. One of the explanatory factors could be the reliance of Canada on the United Kingdom for legal doctrine and judicial interpretation. Until 1949, the Judicial Committee of the Privy Council (JCPC) in the British House of Lords was the highest court of appeal in Canada. Therefore, all the legal discussions about the division of powers happened in imperial British JCPC, not in the federally appointed Supreme Court. Thus, while the U.S. Supreme Court substantially expanded the federal powers since the establishment of the Constitution, Canada went through the reverse process. The JCPC played an important role in this process of decentralization. During the end of nineteenth century, the court considered eighteen cases; fifteen cases of these (75 percent) were decided in favor of the provinces, confirming provincial authority over property rights and civil law. Subsequently, the JCPC's interpretations formed the basis for the modern Canadian Constitution with a relatively decentralized federal system (Parker, 2014, p. 72-73). Therefore, even if the Canadian federation originated as a quasi-unitary state, it subsequently evolved into a truly coordinated federal system (Watts, 1987, p. 773).

The competition between Ottawa and its provinces is as old as the Confederation itself. The process of bargaining for powers by the provinces with the central government started immediately following the signing of the BNA. The provincial responsibility to manage social programs such as healthcare, education, and social welfare encountered budget difficulties.. Initially, the provinces did not have any possibility to cover their costs except through appeals to

Ottawa to help them to finance these programs. As a result, the provinces and the federal government started the process of sharing the costs of social programs. Subsequently, this collaboration was called 'cooperative federalism.' This form of Canadian federalism formed after the World War II, and it was built on financial relations between Ottawa and the provinces: federal-provincial taxation agreements on the revenue side, and a host of shared-cost programs in terms of expenditure (Dyck & Cochrane, 1993, p. 429).

The previous statement means that Ottawa sends money for social programs to the provinces, if they meet the requirements for the financial support (Thompson, 2012, p. 99). The provinces are financially dependent upon Ottawa as they bear responsibility for most public services, and usually do not have enough money to sponsor them. There are three main governmental programs for federal transfers: the Canada Health Transfer, the Canada Social Transfer, and Equalization. The equalization of payments program is the governmental program for addressing fiscal disparities among provinces. The equalization payments allow less wealthy provinces to provide public services for their residents. The goal of this program is to ensure that provincial governments have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation (Subsection 36 (2) of the Constitution Act). 'Fiscal capacity' means that provinces' ability to raise revenues and the '10 province standard' is the average fiscal capacity of all provinces. The revenues from natural resources are excluded from fiscal capacity or 50 percent excluded (Department of Finance Canada, 2015b). Hence, the provinces that perform below the national average are popularly called 'have-not' provinces; currently these include five provinces - Prince Edward Island, Nova Scotia, New Brunswick, Quebec, and Manitoba. British Columbia, Alberta, Saskatchewan, Ontario, and

Newfoundland and Labrador are the 'have' provinces (Milke, 2014, p. 3; Department of Finance Canada, 2015b).

The close cooperation between the provincial governments and the federal government could also be called 'executive relationships,' as they consist mostly of negotiations between the executive branches (Thompson, 2012, p. 99). The federal tendency of strong executive power created the same dominance of the premiers over the provincial legislatures (Watts, 1987, p. 782). Therefore, this process of collaboration between the prime minister in Ottawa and the provincial premiers formed so-called executive federalism in Canada. Thus, Canadian federalism looks more like a closed elite club, where the prime minister of Canada and first ministers (premiers of provincial legislatures) of provinces discuss the problems in the country during federal-provincial meetings (Dyck & Cochrane, 1993, p. 430). On the one hand, it means the lack of transparency and citizen involvement in political issues, and in turn less public scrutiny (Burgess & Gagnon, 1993, p. 245). However, on the other hand, the cooperative process between Ottawa and provinces brought on some positive results such as: greater mobility for people among provinces; improvements in social care system (two pension plans: one for Quebec, another for the rest of Canada), and reduction in the tensions between the federal government and Quebec (Burgess & Gagnon, 1993, p. 232).

Due to the concentration of industries in provinces (which differ from region to region), the Canadian economy is highly decentralized. For instance, the oil and gas industry is still a predominant industry in Alberta, as well as nickel mining in Ontario. The Trudeau government attempted to provide economic nationalism in Canada in the period of the oil and gas boom in the 1970-1980s, by implementing the National Energy Program, but this policy failed (Watts, 1987, p. 780). Pratt (1985) argues that the reduction of foreign investments and control of the

petroleum industry involved large expenses for the national economy. Also, the Western provinces were especially skeptical about the program, as they had to sell their products to central Canada at prices below those prevailing in world markets. Moreover, multinational oil and gas companies shifted the cost of risky exploration to the state. Also, 'Canadianization' of the petroleum industry redistributed the wealth from the working class to rich and middle classes (Pratt, 1985, p. 195).

The territories of Canada: Yukon, Northwest Territories, and Nunavut were not included in the project of the future federation, as the founders of the Canadian Confederation divided all powers only between the provinces and the Dominion. The territories had political representatives appointed by the federal government rather than elected, and they did not represent Indigenous populations. Hence, they were not even considered as subunits of the Canadian federation and did not share the same powers afforded to provinces. The example of the Territory of Alaska before obtaining statehood in 1959 is an analogue of its constitutional status. The ethnic population is different in all three Northern territories, and varies from almost the homogenous aboriginal population of Nunavut (80 percent of people - Inuit) to a majority of non-Indigenous inhabitants (Yukon – 75 percent of non-Indigenous population) (Bankes, 2008, p. 117).

Before the 1970s, Aboriginal peoples had less access to political and bureaucratic powers. However, nowadays, Aboriginals play an active role in territorial governments both as individuals and as entities through their tribal organizations. The discussion between Aboriginal negotiators and the federal government about control over land use, environmental protection, and wildlife management led to the creation of public government bodies with strong Aboriginal representation (White, 2002, p. 97).

2.3.1.1. Land Claims Agreements in Canada

The federal government is more likely to refer to "modern day treaties" in order to describe comprehensive land claims. These agreements were used not only to establish principles for land ownership but also to regulate Aboriginal-federal relationships. They also need to be distinguished from the historical treaties, which were mostly signed in the late nineteenth and early twentieth centuries. The modern day treaties are the second wave of a treaty-making process between Canada and Aboriginal peoples, which began in the mid-1970s. Unlike the historic treaties, modern day treaties contain extensively detailed information, including an explanation of governmental bodies and their structures. Besides this, Aboriginal organizations receive recognition of a variety of benefits and rights, such as cash payments, some subsurface, hunting, fishing and trapping rights, among other things. The 1975 James Bay and Northern Quebec Agreement was the first modern settled claim (White, 2002, p. 97).

The Royal Proclamation of 1763, issued by the King George II of Britain, referred to much of the North American continent. The key objective of the Proclamation was:

> …to provide a solution to the problem created by the greed which hitherto some of the English had all too often demonstrated in buying up Indian land at low prices. The situation was causing dangerous trouble among the Indians and the Royal Proclamation was meant to remedy this… (Royal Proclamation of 1763, cited in Elliott, 2000, p. 208-209).

The Proclamation reserved the lands in North America for Indigenous peoples as "their Hunting Grounds." These lands could not be purchased or settled without a license. Only the Crown could purchase the lands after a public meeting or by a proprietary government. A license for purchasing of these lands was a license for all trade with Indigenous peoples of North America.

Therefore, the Proclamation protected Indigenous lands from possession or use. Elliott (2000) assumes that this legal act recognized that the Indigenous peoples had a pre-existing interest capable of being ceded or sold, although it did not refer directly to any pre-existing interest. However, the geographical scope of the Proclamation was extremely unclear (Elliott, 2000, p. 29).

There is some discussion about whether the Royal Proclamation of 1763 was the origin of Aboriginal title. Justice Judson, for instance, stated that "the fact that when the settlers came, the Indians were there, organized in societies and occupying the land as their forefathers had done for centuries. This is what Indian title means." However, Chief Justice Lamer suggested a second potential source of the concept of Aboriginal title. Although in common law physical occupation is evidence of possession, the relationships between common law and pre-existing systems of Aboriginal law could also prove the existence of Aboriginal title. He assumed that Aboriginal law and physical occupation both are necessary to prove the title (McNeil, 2009, p. 261-262). In Canada, though, Aboriginal title is based on occupation, and Aboriginal peoples have to show evidence that they occupied the claimed land at the time of British assertion of sovereignty (McNeil, 2009, p. 272).

The historic treaties and also the comprehensive land claims agreements signed by the Canadian government and Aboriginal peoples led to the creation of so-called treaty federalism. In the concept of treaty federalism, Aboriginal peoples and federal/provincial/territorial governments could be recognized as sovereign actors that share responsibilities to each other. In this context, negotiated treaties are more likely to be perceived as constitutional agreements. The procedure of negotiations between sovereign actors in treaty federalism could require the creation of special institutions such as management boards (White, 2002, p. 89-92).

Government-Aboriginal boards dealing with wildlife management, land-use planning, and environmental protection were created to fulfill the provisions of modern-day treaties. They are not related to any institution, Aboriginal self-government or federal or territorial governments. Thus, the boards serve as mediators in government-to-government relationships (White, 2002, p. 94). As independent institutions that provide political compromise between the three levels of the government, these boards would be viewed as another self-governed institution that plays an essential role in treaty federalism (White, 2002, p. 97). The interest of Aboriginals in creating co-management boards as a defense against potential resource megaprojects was accomplished during negotiations between the Inuit and Ottawa about the creation of Nunavut. The general idea of creating boards was to open opportunities for Aboriginal input and involvement in deciding resource management questions (White, 2002, p. 98). Overall, treaty federalism could be considered as multi-level governance derived from land claims agreements, which is about relationships, sharing of authority, and practical accommodations of Aboriginal and Euro-Canadian views and perspectives (White, 2002, p. 114).

The federal government of Canada has exclusive authority to make laws affecting "Indians and Lands reserved for the Indians" (Constitution Act of 1867; Indian Act). However, provincial governments can issue provincial laws of general application in regards to Indigenous peoples (Section 88 of the Indian Act date), such as those pertaining to education. These provincial laws must satisfy some requirements. They must be general in nature and cannot relate exclusively or directly to Aboriginal people, because such laws would infringe upon an area of exclusive federal jurisdiction. They must not affect primary federal jurisdiction over Indigenous peoples and lands reserved for them. Some provinces such as Manitoba,

Saskatchewan and Alberta may not enact laws that deprive Aboriginal people of their rights to take game and fish for food. And neither a provincial nor a federal law can infringe on an existing Aboriginal or treaty right protected under Section 35 of the Constitution Act (Parliament of Canada, 2015).

Due to the active political participation of Canadian Aboriginal leaders in the 1970s, Canadian Aboriginals – First Nations, Métis, and Inuit - were included in the text of the Constitution of 1982. It was the beginning of the process of recognition of Indigenous rights, and the creation of Inuit self-governed territory in Nunavut in 1999 is a significant achievement of Canadian Indigenous activism during this time (Francis, Jones & Smith, 2000, p. 419).

The process of recognition of Aboriginal aspirations went faster in the early 1990s sparked by the Oka Crisis. In 1990, a group of Mohawks from the local Indigenous community Kanesatake in Montreal, Quebec, set up a roadblock in order to protect their sacred lands from the expansion of a golf course. The Quebec provincial police, and later the Canadian Armed Forces, confronted the armed Mohawks for 78 days. This incident led to the reconsideration of Aboriginal policy by the Government of Canada (Government of Canada, 2015a). The province of Ontario, which has the largest Aboriginal population in Canada, recognized the right of Aboriginal peoples to self-government. Then, the province of British Columbia finally joined land-claims discussions with First Nations. The federal government established a Royal Commission on Aboriginal Peoples in 1991, which aimed to "examine the economic, social, and cultural situation of the aboriginal peoples of the country". After five and one- half years, the Commission wrote 440 recommendations focused on four major concerns: the need for a new relationship in Canada between Aboriginal and non-Aboriginal peoples; Aboriginal self-determination through self-government; economic self-sufficiency; and healing for Aboriginal

peoples. As a result of their work, the federal government issued a document called "Gathering Strength: Canada's Aboriginal Action Plan" in 1997. Although this document replied directly to only a few of the Commission's suggested recommendations, in general, Ottawa accepted the treaty relationships approach for federal-Aboriginal affairs. This is important, as the reaction of federal government hinted at opportunities for the future development of Aboriginal self-government (Francis, Jones & Smith, 2000, p. 432-433).

There had been a long treaty-making process between Indigenous peoples and the British Crown before the recognition of Canadian statehood in 1867. The new Canadian government inherited this tradition until the 1920s but then the Parliament suspended the treaty-making process until the 1970s. Canada explained this decision by stating that the treaties with Aboriginal communities were dictated by the historical policy of the Crown and they were not the legal responsibility of the new government. Therefore, new land claims agreements and negotiations were stopped (Bankes, 2008, p. 123). However, the *Calder* decision of the Supreme Court of Canada in 1973 confirmed that Indigenous peoples of Canada have an ownership interest in their traditionally occupied lands. The position of the federal court in this case led to the acceptance of the legal concept of Aboriginal title by the Canadian government and the creation of a negotiating structure with the Indigenous communities (Mason, Anderson, & Dana, 2008, p. 176).

If no agreement has been signed between aboriginal communities and the government, these lands are considered as federal or provincial lands and called Crown lands. The legal right of Indigenous peoples to claim lands of their occupation in the absence of a signed treaty or statute is legally known as Aboriginal title. Aboriginal peoples need to give evidence that they

have continued "occupation, possession, and use" of their lands at the time when Crown declared sovereignty (Mason, Anderson, & Dana, 2008, p. 176).

The land claim agreements recognized two categories of rights: the rights to own only surface resources and the rights to own subsurface resources (including oil and gas resources) additionally. Subsurface rights provided capital transfer payments and royalties for resource extraction. In order to protect the environment and set up the authority over land use, the modern-day agreements, starting from the 1970s, include traditional resource harvesting rights and introduce co-management boards such as land use planning boards, water and land use boards and wildlife management boards (Bankes, 2008, p. 123-124).

There are two players in land claims negotiations besides Aboriginal groups: federal and regional governments. Each of these parties has its own interests, which will be discussed in detail in Chapter 4. Many modern-day treaties are still in the process of negotiations (Alcantara, 2013, p. 21-24). The long process of consideration is one of the reasons why the development of oil and gas fields and construction of new pipelines is suspended in the Canadian North. For instance, because of the publication of Berger's Inquiry, the Mackenzie Valley Gas Pipeline project was postponed for ten years in order to meet social, economic and environmental recommendations described by Justice Berger in the report. Besides other issues, Justice Berger noted: "Native people desire a settlement of native claims before a pipeline is built. In my opinion, a period of ten years will be required in the Mackenzie Delta and Western Arctic to settle native claims, and to establish the new institutions and new programs that a settlement will entail. No pipeline should be built until these things have been achieved" (Berger, 1977a). In this regard, even after the ten-year period, when the moratorium was over, the project was delayed, because of unsuccessful negotiations with Den Cho First Nations, whose territory lies in the

project area (Bankes, 2008, p. 123-124). In March 2011, the project received National Energy Board approval and a Certificate of Public Convenience and Necessity (TransCanada, 2015). However, the future of the Mackenzie Gas Project is still uncertain due to lack of economic viability (Østhagen A., 2013, March 12).

2.3.2. Federalism in the United States and Alaska Natives

The American War of Independence between Great Britain and its Thirteen Colonies ended with not only sovereignty to the colonies, but also a sense of rapidly developing unity and goal sharing within the new nation. This sense of unity was one reason the colonies decided to be a single country, rather than independent states, but it did not become apparent in the system of government until the Constitutional Convention. The first American constitution, the Articles of Confederation, was a draft of the future state in the form of a confederation, working on the same principle as Switzerland. Article II granted "sovereignty, freedom and independence" to each state, and the new union was called a "league of friendship." However, the confederation model failed due to the weak structure of the Congress and the even weaker executive and judicial branches. The Congress under the Articles had one representative from each new state, chosen by the state legislature. Congress could not generate tax revenue; enforce national laws or international treaties; or finance national armed forces, even though they handled the national forces and defense. Broad residual powers remained with the states. After the weaknesses of the central government had become obvious, American political leaders decided to meet in Philadelphia in 1787 for a constitutional convention, which subsequently created the American Constitution. According to the new Constitution, the states and national government were granted concurrent and separate independent powers, but the new federal government was authorized to do much more than was stated under the Articles, such as taxation and the

regulation of interstate and foreign commerce. According to the Constitution's 10th Amendment, the states retained exclusive jurisdiction over all subjects that were not the under the competence of the federal government (Parker, 2014, p. 159-160).

However, with the victory of the Union forces in the Civil War, the balance of power shifted to the national government. The supremacy of the federal government established by Article 6 in the Constitution was wielded to a much greater extent. The Civil War amendments to the Constitution expanded federal jurisdiction in the aftermath of slavery's end, and to reconstruct the southern states from the consequences of the war. This tendency of the strong national government continued to slowly develop with the presidency of Franklin Roosevelt, and his New Deal policy and the rise of the Welfare State serving as the last major demonstration of federal dominance (Parker, 2014, p. 159-160).

The Articles of Confederation and the Constitution of 1787 describe the powers of the federal government and the states in a different way. Whereas the Articles of Confederation gave a restricted definition of congressional authority, the new Constitution granted Congress the power "to make Laws which shall be necessary and proper for carrying into Execution the [enumerated] Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof." Therefore, the vague definition of the power of the federal government provided some flexibility in its interpretation, and through the "elastic clause," as the above-quoted clause has come to be called. The Supreme Court of the United States played an important role in this centralization of the federation through the broad interpretation of the Congress' power in *McCulloch v. Maryland* (1819) in the wake of the establishment of judicial review in *Marbury v. Madison* (1803). Due to a series of the Court's decisions, the federal government expanded its jurisdiction into areas of the state authority, such

as transportation, welfare, education, and the local economy (Parker, 2014, p. 165-166). The United States developed in a system of "regulatory federalism," and the Congress has broad authorities to pre-empt and override the policy of subnational governments (Parker, 2014, p. 167).

Besides the advantages of the "elastic clause," Congress has other regulatory instruments to ensure compliance of the states with a national policy through the use of federal funds. This system allows Congress, without much negotiation, to spread a national policy across the United States. For instance, in the case of alcohol policy, when nineteen states set up the blood-alcohol limit of 0.08, the federal government decided to establish this limit as national, forcing the states to join this law. It did so coercively by refusing to release highway funds to states that did not lower their blood alcohol limits, rather than passing federal laws. So, the national government prefers to use the power of coercion, avoiding having to negotiate intergovernmental agreements (Parker, 2014, p. 168). Jeffrey Parker, in his book "Comparative Federalism and Intergovernmental Agreements" divides regulatory tools of Congress into four groups: 1) direct orders (mandates); 2) cross-cutting regulations; 3) cross-over sanctions; and 4) partial pre-emptions. The partial pre-emptions are defined as a set of federal standards that delegate management to states if they establish standards the same as federal ones. The pre-emptions could be used in the fields of environmental protection and natural resources (Parker, 2014, p. 169).

Therefore, the United States has a less centralized structure than Canada and Russia in many ways; however, it is a much more centralized country now than it was prior to the Great Depression era of the 1930s. These fluctuations in the power relationships between the states and Congress have played a role in environmental and Indigenous issues. The US Supreme Court

has participated in these relationships as a regulator of rights and responsibilities of America's Indigenous peoples –Native Americans and Alaska Natives.

According to the Commerce Clause, which states that Congress has the power "To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes" (Article I, Section 8, Clause 3 of the U.S. Constitution), and the Supremacy Clause, which states: "This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land" (Article VI, Clause 2 of Constitution), Congress has plenary power over Native American communities and their members. These two constitutional provisions mean that Congress has full authority over relations with Indigenous peoples. Originally, this was supposed to protect Native Americans from land disposal without federal permission and to set up the authority of federal law over the political relationships of Native communities. However, the absolute power of the federal government has been interpreted by the Supreme Court as obligating "fairness," "trust," "or "guardianship" of Indigenous communities.

The Marshall trilogy, which refers to three decisions written by Justice John Marshall of the U.S. Supreme Court, shaped federal Native American policy. These decisions expressed the concepts of aboriginal land title, federal trust responsibility, and inherent governmental powers of Native tribes (McBeath & Morehouse, 1994, p. 98). In *Johnson v. McIntosh* (1823), the concept of "Aboriginal title" introduced in the decision related to the "rule of discovery." According to this rule, Native American tribes, as "first discoverers," had the rights of first possession, and, therefore, only their nation could transfer, change, or extinguish these lands.

Although Natives could sell or transfer their lands to non-Natives, the courts would recognize only those transfers made to the federal government (McBeath & Morehouse, 1994, p. 98).

The Supreme Court of the United States determined that Native Americans were "domestic dependent nations" in its decision in *Cherokee Nation v. Georgia (1831)*. Using international law practice, the Court recognized the legal and moral responsibility of the United States to protect the interests of Native tribes, and also identified Native Americans as "dependent sovereign" tribes (McBeath & Morehouse, 1994, p. 99). The case of *Worcester v. Georgia* in 1832 was caused by a conflict between federal and state jurisdiction over the relationships with Natives. Clarifying the constitutional treaties and acts, Marshall articulated the principle of federal supremacy in Native relationships. More importantly, the Court recognized and defined "tribal sovereignty." This tribal sovereignty was identified to be "dependent," dynamic, and not absolute. Marshall acknowledged that the relationships between the federal government and Natives could be changed, adjusted and redefined, depending on new circumstances (McBeath & Morehouse, 1994, p. 98-99). This decision made two points regarding the legal status of American Natives: 1) Congress is the ultimate authority in Native affairs; 2) Native Americans are to be recognized as nations that have relative sovereignty, and thus, they have a right to develop their own, tribal governance (McBeath & Morehouse, 1994, p. 102).

Since the 1950s, Congress has issued a number of statutes further defining the federal relationships with Native Americans, some of which were directly related to Alaska Natives. The courts usually look at these statutes as definitions of specific federal obligations to Native Americans (Case & Voluck, 2002, p. 4-5). Congressional actions reflected a new era of self-determination of American Natives. A series of congressional acts, presidential pronouncements,

and judicial decisions supported the development of new types of tribal governance. Some of these acts played an essential role in tribal sovereignty, such as the Indian Civil Rights Act (1968) (which placed tribal governments in a role of responsibility and accountability), the Indian Self-Determination and Education Assistance Act (1975) (encouraged tribal government to be involved in planning and administration of Native programs), and the Indian Child Welfare Act (1978) (strengthened tribal control over adoption and guardianship of Native children) (McBeath & Morehouse, 1994, p. 102).

The Indian Reorganization Act (1934), recognized Native American self-determination, encouraging a change in tribal attitudes in regards to their sovereign status, and starting a new era of tribal sovereignty. However, the U.S. government still continued to consider Native Americans as nations that were dependent on the federal government. President Nixon in his speech in 1970 noted that "The Indians of America need Federal assistance – this much has long been clear. What has not always been clear, however, is that the Federal government needs Indian energies and Indian leadership if its assistance is to be effective in improving the conditions of Indian life. It is a new and balanced relationship between the United States government and the first Americans that is at the heart of our approach to Indian problems" (Bankes, 1983, p. 67-69).

Why is it important to look at the Native American-federal relationships at the beginning, and only then move to Alaska Native federal policy? Indigenous populations of the U.S. were identified as equal citizens under the law (with non-Natives), through the Indian Citizenship Act of 1924. They also have collective Aboriginal title to tribal land and special rights to hunt and fish. They also have the right to individual and corporate ownership of private land and resources. Unlike other Americans, besides those participating in general federal programs,

Native Americans could also have access to specific federal programs, designed specifically for them (McBeath & Morehouse, 1994, p. 103). However, Alaska Natives joined the U.S. much later than Native Americans, at the time of post-Civil War assimilation era of federal Native American policy. In this period, Native Americans were considered as tribes that needed to be "civilized", which meant that they had to be trained, educated and then to become a part of a mainstream society. This policy of assimilation also affected the lives of Alaska Natives, when military officers came to Alaska in order to enforce federal customs and Native liquor laws (McBeath & Morehouse, 1994, p. 105-106). Thus, historical predispositions of the relationships between the U.S. government and Alaska Natives were strongly related to the federal experience with Native Americans.

During the first period from 1867 to 1912, before Alaska gained Territorial status with an elected legislature, Congress did not consider Alaska Natives in the same way as Native Americans. Hence, they could not claim Aboriginal title or the same self-governing status as Indigenous people in the Lower 48. The Treaty of Cession of 1867 was signed as a result of the acquisition of Alaska from Russia. Article III of this treaty provided a distinction between the Russian inhabitants of Alaska and the Indigenous communities. Congress gave a choice to Russian settlers to either go back to Russia or stay in Alaska and obtain citizenship in the United States. The Indigenous people, however, were considered to 'be subject to such law and regulations as the United States may, from time to time, adopt in regard to aboriginal tribes of that country' in the lower states. However, Alaska did not have statehood until 1959, meaning Alaska Natives could not have the same rights as Native American tribes in the Lower 48. Thus, the treatment of Alaska Native tribes by the federal government could be divided into three periods: 1) the early years (1867-1934) noted above; 2) the middle period the Indian

Reorganization Act (1934) to Alaska Native Claims Settlement Act (ANCSA) (1971); 3) the post-ANCSA period (Bankes, 2008, p. 128-129).

The second period began when Congress applied the Indian Reorganization Act (1934) to Alaska Natives in 1936, and law practices recognized that the U.S. is responsible for the protection of native occupied lands in Alaska from acquisition by non-Natives. After this Act, recognition of Alaska as a state continued this idea. The Alaska Statehood Act provided for the protection of lands occupied by "Indians, Eskimos, or Aleuts" from being selected by the State of Alaska following statehood in 1959. The Indigenous lands remained under the jurisdiction of the U.S. In 1959, the US Supreme Court case *Tee-Hit Indians vs. the United States* confirmed that Alaska Natives could maintain a claim of Aboriginal title. At the same time, the Statehood Act granted the State of Alaska 104 million acres of land, which the State was eager to select. Owing to controversy surrounding the question of Native ownership of much of the land in Alaska, the Secretary of Interior decided to freeze the State's land selections until Native land claims were settled (Bankes, 2008, p. 128-129)

The third period began, when, eventually, in 1971 Congress adopted the Alaska Native Claims Settlement Act (ANCSA) as a comprehensive settlement for Alaska Natives. ANCSA was called 'a law of stunning complexity;' it vested ownership of about 45 million acres of land in 12 regional corporations, two hundred village corporations, and nearly seventy-five thousand individual Natives villages, and paid nearly one billion dollars (McBeath & Morehouse, 1994, p. 109). Being owners of oil and gas rights, regional corporations obtained the right to participate in resource extraction and signed agreements with petroleum companies. The ANCSA settlement dealt only with Alaska Native land claims, and did not include other Indigenous and environmental issues such as traditional resource harvesting, subsistence rights or self-

government. Therefore, ANCSA regulated the transfer of native lands to native-owned corporations, including oil and gas rights. ANCSA settled Alaska Natives' aboriginal land claims by awarding them fee simple title to the land they received For the most part, the tribes selected lands in their traditional areas (Bankes, 2008, p. 128-129).

Huhndorf & Huhndorf (2011) argue that most Alaska Natives considered ANCSA as the best settlement that they could have. The Alaska Federation of Natives represented the interests of Alaska Natives in the negotiations surrounding the Native Land Claims. As a result, all Native organizations, which were established to address community needs, except Arctic Slope Native Association, voted in favor of ANCSA (p. 387, p. 399). Each Alaska Native with at least one quarter Native heritage received about 100 shares in both regional and tribal organizations. Their descendants could eventually inherit these shares. The regional corporations hold rights to subsurface resources on their land. According to ANCSA, 70 percent of natural resource revenues accumulated by the corporations must be shared with the other 11 corporations (Mikkelsen, Haley, & Øygarden, 2008, p. 144).

2.3.3. Russian Federalism and Indigenous Small-Numbered Peoples

The Constitution of the Soviet Union of 1977 defined the government structure as a "unified, federal, multinational state formed on the principle of socialist federalism." The Soviet federation was divided into subunits, according to the principle of ethnicity and the principle of territory. The Soviet Union included ethnic union republics (Russia, Ukraine, Belarus, Armenia, and others), which subsequently became sovereign states. Each of these republics consisted of smaller subunits. For instance, Russia (Russian Soviet Federative Socialist Republic) included ethnic autonomous republics, autonomous *oblasts*, autonomous *okrugs*, and regions that were divided territorially (*oblasts, krais*). Hence, being a federation, the Soviet Union *de jure* granted

some amount of sovereignty to subunits (article 76), the right to be in negotiations and sign agreements with foreign powers (article 80), local control over economy (article 77), and last, the right to secede from the federation (article 72) (Ross, 2013, p. 17).

Figure 2.5. Administrative Divisions of the Former Soviet Union (Central Intelligence Agency, 1974).

Since the establishment of the Soviet Union, an ethno-territorial form of a federation was implemented to attract support from the non-Russian ethnicities in the establishment of the eventual Union. Moreover, the Soviets were aiming to make all ethnicities in the country equal. Stalin's formula "national in form, socialist in content" was supposed to smooth ethnic tensions and disturbances in society (Ross, 2013, p. 17-18). In the 1920s, the government decided to implement the policy of indigenization (*korenizatsiia)* that was aimed to support Native languages in ethnic regions, and to raise a new Soviet elite among Natives. It was also the time of a broad propaganda of internationalism when the Communist ideology actively supported self-identification of citizens as distinct ethnic minorities (Sukhov, 2007, p. 47). Declaring the principle of national self-determination, the Bolsheviks moved from the colonial administrative principle to the ethnographic principle of construction of the new federation. The Civil War following the October Revolution only strengthened their statement. Unlike Whites that were against any secession, the Reds (the communists) encouraged sovereignty of ethnic minorities and their autonomy. The support of the former colonies oppressed by the Empire regime was one the reasons for the Reds' victory in the Civil War (Goode, 2011, p. 43).

Adhering to Marxist ideology, the new Soviet government considered the principle of "ethnic particularism" as the opposite to capitalism. Larger, dominant nations were perceived as tools of economic expansion (Slezkine, 1994, p. 416). The government strongly promoted the construction of the USSR as a large communal apartment in which national state units, various republics and autonomous provinces represented "separate rooms" (Slezkine, 1994, p. 415). It meant that each nation (people) obtained the rights to organize its life on the basis of autonomy, and to construct federal relations with other nations. The establishment of ethno-territorial autonomies for Indigenous peoples seemed the best option for the implementation of this policy.

The nations were divided as "backward" and "civilized;" however, they were all considered equal to each other, and had the same rights (Slezkine, 1994, p. 416). Analyzing the degree of their "backwardness," the government made decisions on which type of the governance was needed in a particular autonomous unit. Some Indigenous peoples were assigned self-governance, as, for instance, Sakha (Yakuts), because they lived compactly and were ready "to organize their lives through their own efforts." The Estonians had a literary tradition, and the government designed a special bureaucracy to provide them with newspapers. The nations that lived in widely dispersed communities were considered "primitive" and received a distinct government (Slezkine, 1994, p. 421).

The adoption of the Marxist ideology into the minds of society required educational reform. As "the father of nations" Joseph Stalin assumed that "only the mother tongue can make possible a full development of intellectual faculties of the Tatar or of the Jewish worker." Vladimir Lenin suggested the construction of Marxist schools with the same curriculum, but taught by native teachers and in native languages (Slezkine, 1994, p. 418).

These political views led to the policy that was called *"korenizatsiia"* ("nativization") and was implemented during the 1920s. The policy was presented as a "fixation of forced Russification" provided by Imperial Russia. *Korenizatsiia* consisted of several steps: 1) preference of local people who spoke Native languages and knew local traditions and customs to be elected in local governments; 2) the adoption of special legislation that provided use of Native languages everywhere in governmental bodies; and 3) construction of ethnic schools with a unified curriculum (Xianzhong, 2014, p, 43-44). After the 1920s the policy of *"korenizatsiia"* stopped. The government realized that the support of over 192 languages and the same number of bureaucracies across the country was too overwhelming (Slezkine, 1994, p. 446).

But the main reason for the termination of this policy will be analyzed through a discussion about the final structure of the USSR. Lenin and Stalin had different opinions about the structure of the Soviet Union, particularly about the status of autonomous republics (ASSRs) and the Soviet socialist republics (SSRs). The ASSRs had lower-level status than SSRs and they did not have a right to secede from the union (Kahn, 2002, p. 75). While it is purported that Lenin would give greater autonomy to the ASSRs, Stalin highly supported the incorporation of the SSRs as ASSRs in order to create a strong centralized state. After Lenin's death, Stalin began to implement his plan (Kahn, 2002, p. 75, 76). The Constitution of 1936 set up the new structure of the Soviet Union, limiting SSR sovereignty over civil and criminal codes, transportation, fiscal and monetary policy. Autonomous republics were limited even more, losing the equivalency of representation with SSRs in the Council of Nationalities – only eleven deputies instead of twenty-five. In addition, Stalin removed regional authority over natural resources, heavy industry, and fiscal planning. Due to Stalin's suspicion of alleged collaboration with the Nazis in the 1940s, several autonomous republics of the Chechen-Ingush, Kalmyk, Crimean Tatar, and Volga Germans were removed from the USSR, and the ethnic population of these regions was exterminated or exiled to Siberia and Kazakhstan (Kahn, 2002, p. 76-77). After the death of Stalin, the new leader of the government, Nikita Khrushchev, started the process of criticism of Stalin's personality cult and his terroristic methods, which led to rethinking of the state's structure. At this moment, privileges given to the titular ethnicities of autonomous republics at universities had led to the increase of intelligentsia in these regions. Party leaders in ethnic republics spoke for local control over resource distribution in order to stimulate the development in their regions. Khrushchev's attempts to decentralize the country stimulated the reopening of ethnic agendas (Kahn, 2002, p. 79). This situation caused tensions between the

ethnic elites and the central government (Kahn, 2002, p. 80-81). Brezhnev's Constitution of 1977 changed the limited rights of SSR's and ASSR's, and union law was made superior to all other laws in each case of controversy (Kahn, 2002, p. 81).

Therefore, despite the construction of ethnic governments within the country, the federal relationships in the Soviet Union *de facto* did not exist. As Stalin stated in the North Caucasus in 1920: 'Autonomy means not separation, but a union of the self-ruling mountain peoples with the people of Russia' (Kahn, 2002, p. 70). Kahn (2002) argues that autonomy in the Soviet Union meant unification, not independence (p. 70). Even the last leader of the USSR, Mikhail Gorbachev, publicly announced in 1989 that the "Soviet Union is a centralized and unitary state, and the Soviet people never lived in a federation" (Ross, 2013, p. 17). In other words, the Soviet Union granted nations cultural autonomy, territorial integrity, and symbols of statehood, while at the same time, the power of the central authority excluded any attempt by these subunits to operate separately from the unitary state.

Gorbachev's policies of *glasnost*, *perestroika*, and democratization brought to light federal and ethnic questions in multinational Soviets. His idea was to give real economic and political autonomy to the republics, and therefore, convert the Union of Soviet Socialist Republics into the Union of Soviet Sovereign States. Gorbachev highly supported the conception of an asymmetrical federation, mixing confederal relations for some of the Soviet republics (Baltic republics, Georgia, Moldova, and Armenia) with federal relations with the others. The periphery within the federation could also obtain some level of economic independence, which could lead to economic decentralization. However, the beginning of political freedom caused the signing of a declaration of sovereignty by Russia (being at this time the Russian Soviet Federative Socialist Republic (RSFSR), which announced full independence of Russia in

decision-making processes, and the priority of the RSFSR's Constitution and Laws in the entire territory (Ross, 2013, p. 18-19).

This brave step of Russia gave a compelling reason to other union republics to declare their sovereignty. As a result, Uzbekistan, Moldova, Ukraine, Belarus, Turkmenistan, and subsequently, Armenia announced their sovereignty from the Union. It is a small wonder that this wave of "separatism" in the Union caused similar waves in autonomous republics in the RSFSR. Furthermore, the principle of how the RSFSR was constructed repeated the same model as the Soviet Union (Ross, 2013, p. 19-20). This situation in the country was aggravated by tensions between Gorbachev and Yeltsin, who was the head of the RSFSR at this time. Gorbachev, in an attempt to stymie efforts by Yeltsin to separate Russia from the Union, issued the All-Union Law "On the Delimitation of Powers between the USSR and the Subjects of the Federation," wherein he granted autonomous republics the right to be represented equally with the union republics in negotiations over the Union Treaty. Yeltsin replied with his famous phrase to the heads of autonomous republics: "Take as much sovereignty as you can swallow." The second wave of a sovereignty of the autonomous republics formed twenty ethnic sovereign republics (after the separation of Checheno-Ingush Republics on Chechen and Ingush republics – twenty-one) (Ross, 2013, p. 20-22).

Although Gorbachev's project of asymmetrical federation failed, Russia has political asymmetry, which arises through differences in political power from diverse cultural, economic, and political conditions, and constitutional asymmetry with the existing legal differences in the powers granted to the varied governments (Kempton, 2001, p. 221). After the collapse of the Soviet Union, the Federal Treaty, the contract that finally established the asymmetrical

federation was signed on March 31, 1992. This document led to the massive decentralization of the Russian political system (Goode, 2011, p. 6).

The Federal Treaty distinguished the subunits of the federation into three types: national-state formations (sovereign republics); administrative-territorial formations (*krais*, *oblasts*, and the cities of Moscow and St Petersburg); and national-territorial formations (the autonomous *oblasts* and autonomous *okrugs*). Each of them has different rights and powers. In addition, this Treaty divided the federal and local jurisdiction into three areas: federal, joint, and regional (Ross, 2013, p. 23). This document granted ethnic republics a variety of rights to self-determination such as citizenship rights, ownership of their lands and natural resources, and even the right to secede from the Union (Ross, 2013, p. 23-24). However, with the ratification of the Constitution of the Russian Federation in December 1993, all the regions were granted only "residual" powers, and nothing was mentioned about the exclusive powers of the ethnic republics (Ross, 2013, p. 30). Nevertheless, the content of the Federal Treaty was included in the text of the Russian Constitution of 1993.

The Constitution of the Russian Federation was ratified on December 12, 1993. The Russian Federation duplicated the structure of the Soviet Union. Similarly, the logic of the hierarchy between nations, when larger ethnicities obtained the right to be considered as states, and smaller nations were recognized as 'nationalities' and did not take the same privileges (Sakwa, 2008, p. 238). Thirty-three ethnicities have their 'small homeland,' and sixty-three do not have theirs. The peoples who do not have their 'homelands' were included in the regions, without having their own ethnic republic (Sakwa, 2008, p. 241).

Therefore, Russia was divided into federal subunits, following the ethno-territorial principle and the territorial principle. The territorial principle of organization created the two

federal cities (Moscow and St Petersburg), the 49 oblasts, and the 6 krais (different from oblasts, called 'krais' or 'edges,' because they are located around the borders) (Sakwa, 2008, p. 240). Belonging to these regions, the autonomous okrugs were called by the name of their titular ethnic groups (such as the Khanty-Mansi and Yamal-Nenets okrugs), though most of them have Native populations of less than 50 percent. There is some discussion about whether autonomous okrugs should be converted to oblasts. Furthermore, the status of the Jewish autonomous oblast is questionable. This is only autonomous oblast in Russia, and it was historically created after Stalin sent the Jewish population to the Far East as a part of his nationalist policy (Sakwa, 2008, p. 242).

Figure 2.6. Russia's Administrative Divisions (Central Intelligence Agency, 2001).

Usually, federal constitutions divide exclusive authorities in specific areas between the center and periphery equally. However, in practice, not in the law, the balance of powers between the federal and subnational governments can be not equal, and this balance varies from one country to another. There are some joint jurisdictions, also, between the federal government and subunits. The balance of powers between center and subunits (which were called as subjects of the federation) as explained by the Russian Constitution, favors the central government. Article 71 of Constitution established the jurisdiction of the Kremlin over the national economy, federal budget, federal taxes and duties, foreign and defense affairs, and Article 72 also includes the explanation of joint responsibilities of the federals and the local governments. Therefore, the common jurisdiction over economy, taxes, and budget was granted to the center, and the rest of the authorities, which were not included in Articles 71 and 72, were delegated to the subjects (subunits) of federation. This is a main difference between the Federal Treaty of 1992 and the Constitution of 1993 (Ross, 2013, p. 30).

The same controversy exists in issues related to the ownership of natural resources. The federal Constitution declares joint jurisdiction between the federal authority and the subjects of the federation over natural resources. At the same time, for example, the Constitutions of Sakha, Tatarstan, Bashkortostan, Tyva, and Buryatiya declared that the natural resources are in their ownership. Moreover, the Constitution of Sakha says that even the "air space, and the continental shelf of the territory is the inalienable property of the citizens of the Republic" (Ross, 2013, p. 38).

It is no wonder that ethnic republics announced that their Constitutions have a priority over the federal Constitution. The speeches of both Gorbachev and Yeltsin about the "equal rights of ethnic republics with the union republics of the Soviet Union", and the encouragement

"to get as much sovereignty as they could swallow" inspired the parliaments of these federal subjects to ratify their constitutions with some radical rights such as self-determination, sovereignty, and secession (Ross, 2013, p. 35). As a result, most of the republican constitutions contest the federal one. For example, the Constitution of Russian Federation declared "the sovereignty of the Russian Federation extends to the whole of its territory," whereas, for instance, the Constitution of Tatarstan says that "the Republic of Tatarstan shall be a Sovereign State, a subject of international law, associated with the Russian Federation on the basis a treaty and the mutual delegation of powers." Another example is the Constitution of Bashkortostan, which says "Bashkortostan joined the Russian Federation on a voluntary and equal basis" (Ross, 2013, p. 36). Thus, according to Cameron Ross, a researcher of the democratization process in Russia, "constitutional asymmetry created political asymmetry" (Ross, 2013, p. 35).

The changes in the old autonomy-territorial model of the federation could potentially lead to federal-regional conflict. American and Russian political scientists carried out a survey in ethnic republics in 1993, asking the question "Of what polity do you consider yourself a representative?" The majority of respondents answered, "Equally my republic and Russia". The response, "Only my republic" dominated in Chechnya and Tyva. The same survey was provided in 1994, and the results revealed primarily republican (civic identity, not ethnic) identity rather than Russian. Thus, radical changes in the model of the Russian Federation, consisted of a shift to the territorial model, and could lead to strong secessionist reactions from the ethnic republic (Kahn, 2002, p. 170-171).

In order to provide a consensus between the sovereignty claims and the federal Constitution, the regions and the federal government signed bilateral agreements regarding the joint jurisdiction over natural resources, profitable industries, tax concessions, and other issues.

The central government granted the right of republics to appoint their federal officials, create political organs, and other political privileges. In the case of the Sakha Republic, a treaty gave to the region the right to own 26 percent of the diamonds, 30 percent of the gold, and some percentage of the petroleum deposits (Ross, 2013, p. 41).

However, in the mid-1990s, when Yeltsin won his second election, the ethnic republics started to lose their power. In 1999, Yeltsin delimited the bilateral treaties, and Putin, his successor, began the process of standardization of bilateral agreements, and the creation of a common constitutional framework (Kempton, 2001, p. 205). The recentralization of power in the 2000s began with the reformation of the Russian Federation in seven districts. The distinction of the seven federal districts led to the creation of uniform legal space (federal courts), economic space (consolidation of banks' divisions), and information space (mobile networks) in Russia (Goode, 2011, p. 57). However, the relationships between the central government of Russia and periphery are based less on federal principles of subnational governance. The regions, including ethnic republics, have lost their rights to make political and economic decisions, and their decision options are becoming more centralized. Ross notes "the Russian Federation is a quasi-unitary state in federal clothing" (Gill &Young, 2013, p. 151).

Overall, 'matryoshka' doll-like federalism (Sakwa, 2008, p. 238) of the Russian Federation copied the old Soviet federation model. Although Soviet federalism was formal, the new Yeltsin federation promised more autonomy for the ethnic republics, which was partly provided. Being a vast state, Russia could be better governed within federal-local relationships. However, the promise of 'sovereignties' was only a temporary policy of the new government. The goals of Yeltsin were to attract the support of the regional elites, and to avoid possible separatist attitudes. Nevertheless, even though the republics lost some of the sovereignty that

they had at the beginning of 1990s, they still have more special rights than territorial regions, such as their own Constitution and state symbols, which translate into their special constitutional status. Also, they receive federal subsidies. This is the ground for a permanent rivalry between *oblasts*, *krais* and their competitors – ethnic republics.

Due to the long period of Russian presence in their territories and close contacts with Slavic peoples, Indigenous peoples of the Far North became more culturally (urbanization), religiously (Orthodox Christians), and linguistically Russified. The European part of the Russian Arctic consists of many different ethnicities such as Sami (Kola Peninsula), Karelians (Republic of Karelia), Mordvins, Udmurts, Mari (around the Urals), and the Komi (Republic of Komi). Their lifestyles are closer to Russians from the European part of Russia than to Siberians and Far Easterners who prefer to practice reindeer herding, hunting, and fishing. The Siberian and Far Eastern peoples from the Far North consist of a variety of ethnic groups: Khants and Mansi; Dolgans, Nenets, Nganasan, Evenk and Evens, Chukchi, Koryaks, Inuits, and Yukagirs (Laruelle, 2013, p. 37-38).

Due to the multinational characteristics of the federation and the variety of Indigenous peoples in its territory, Russian legal literature traditionally divides aboriginal peoples into four groups: 1) Titular Nations (Russians); 2) Titular Nations (in Republics); 3) Indigenous Minority Peoples; 4) National Minorities. Only Indigenous minorities and national minorities can receive benefits from the government. The Federal Law regarding guarantees of the Rights of Indigenous Minority Peoples of the Russian Federation determines the requirements for aboriginal peoples to be considered as Indigenous minorities.

Russian legislation uses a few criteria to establish the recognition of ethnic groups as Indigenous peoples, such as lifestyle, livelihoods, ethnic identity and population; however, only

population size is a relatively straightforward requirement in order for peoples to be considered as Indigenous in Russia. Only groups with a population less than fifty thousand people can be considered as small-numbered Indigenous people. Furthermore, larger ethnic groups that are Indigenous, including Sakha, Komi or Chechens, are not included in this category because of their larger population densities. Hence, larger ethnic groups could be considered as Indigenous in a broader sense; however, they lack the ability to obtain the same rights, benefits and federal protection as the smaller groups. The list of the Arctic Indigenous minorities consists of 22 ethnicities, except Yakut (Sakha) (478,085 peoples in the 2010 Population Census); Komis (and Komi-Permiaks) (329,111); and Karelians (60,815) (Laruelle, 2013, p. 36). There is also the possibility that some small-numbered Indigenous groups in Russia, such as Nenets people, could lose their Indigenous status in the future due to increases in their population (Øverland, 2009, p. 169).

The other important aspect of 'Indigenous' legal status to understand is that it mostly covers Northern groups of Russian Indigenous peoples. The term of "small-numbered Indigenous peoples" was introduced in the 1920s by the Soviet authorities, and discussion about the Indigenousness was mostly focused on Arctic industrialization, and the protection of Arctic Indigenous peoples (Øverland, 2009, p. 169).

Ethno-federalism in Russia was shaky with the beginning of Putin's recentralization reforms in the early 2000s. The ethnic Arctic republics Sakha-Yakutia, Komi, and Karelia still have some autonomy from the federal government. However, the Komi-Permiak region joined the Perm' region in 2005, the Taimyr (Dolgan) and Evenki districts became the parts of the Krasnoyarsk region, and eventually, the Koriak district merged with the province of Kamchatka. Thus, some ethnic minorities lost their ethnic regions because of the recentralization reform in

the 2000s. Most of the ethnic regions in the Arctic, except Republic of Sakha (Yakutia), have a majority of ethnic Russians (Laruelle, 2013, p. 169).

Due to the recentralization reforms, and unlike the situation with the Indigenous peoples of Canada, Russian Indigenous minority peoples do not have any political autonomy and do not obtain any benefits from mineral resources exploitation. The International Labor Organization Convention on Indigenous and Tribal Rights has not been ratified by the Russian Federation (Laruelle, 2013, p. 38). This means that Indigenous minorities still have not received the international legal guarantees of payments from the government concerning mining activities in their traditional territories. Unlike Canada, Russia has not yet considered the legal rights of aboriginal peoples to own and possess their lands, which they occupied for a long time, or so-called Aboriginal titles (Garipov, 2014, p. 69). According to the Constitution of the Russian Federation (1993), possession, utilization and disposal of land and other natural resources shall be exercised by the owners freely, if it is not detrimental to the environment and does not violate the rights and lawful interests of other people. However, in accordance with the Law "About Subsoil" (1992), subsoil resources within the country's borders are owned by the Russian Federation, and cannot be sold, gifted, inherited or alienated in any form (Article 1.2). Thus, only the state has a right to lease mineral resources such as petroleum to other parties.

Russian law allows the Indigenous small-numbered peoples to organize into local communities (obschchiny). These communities have the status of local self-government and are also clarified as noncommercial legal entities , and it makes them free from taxation (Øverland, 2009, p. 174).

Therefore, the policy on extractive resources should be considered highly centralized, as it does not include collaboration with aboriginal populations or the use of traditional knowledge

(Laruelle, 2013, p. 38). Though the Constitution of the Russian Federation considers use of traditional natural resources as a part of the Indigenous minority peoples' rights, the Federal Law "About subsoil" does not mention the rights of Indigenous peoples to extract natural resources from their lands (Consultant Plus, 1992; Garipov, 2014, p. 72). Also, there are gaps in Russian real estate legislation about the status of lands being traditionally occupied by the Indigenous peoples. The Federal Law "About the Territories of Traditional Nature Use" introduced specific rights of Indigenous people regarding particular types of protected lands. According to this Law, the lands of traditional use can be divided into federal, regional and local territories. These territories have the legal status of "specially protected natural areas," and Northern residents have a right to compensation in the case of damage to their lands. However, federal territories at the moment of implementation of the law were not yet established, which led to court cases between Indigenous communities and the federal government. The complicated situation with the division of federal and regional lands causes legal insecurity for Native peoples, especially during the process of signing economic agreements with the oil and gas corporations (Sirina, 2009, p. 192-193).

Although Russia seems like a highly centralized federal state, the federal and subnational (regional) governments have concurrent authority in affairs with Indigenous peoples. The Constitution of the Russian Federation implies a distinction between the areas of jurisdiction of the Russian Federation (article 71) and areas of concurrent jurisdiction of the federal and the regional governments (article 72). The rest of them, which are not mentioned by the Constitution specifically, fall under regional jurisdiction.

Article 72 designated "the protection of traditional lands and traditional lifestyle of small-numbered ethnic communities" under the concurrent jurisdiction of both federal and regional

governments. Traditional lands are understood as "historically formed area, where Indigenous peoples have their cultural and casual activities, and which influences their self-identification and lifestyle." Traditional lifestyle in this situation means "historically formed way of subsistence, originated by the historical experience of their ancestors in nature use, authentic social organization of living, authentic culture, customs and religions" (Federal Law "About the Guarantees of Rights of Indigenous Small-Numbered Peoples of the Russian Federation") (Kryazhkov, 2013, p. 37).

Thus, the regional governments can regulate Indigenous relations if their local legislation does not contradict federal laws. If there are legal collisions between the regional and federal laws, then federal law is considered superior. There are some further conditions such as: 1) regional legislatures cannot interfere in areas of federal jurisdiction and in areas of jurisdiction of other institutions, established by the Constitution, federal laws, contracts and agreements; 2) regional laws cannot deprive, limit, constrict, or distort rights and liberties; 3) the supremacy of international agreements over the Russian law; 4) regional laws cannot repeat the provisions of the federal laws; 5) regional laws need to be oriented toward making federal laws more detailed and focused (Kryazhkov, 2013, p. 38).

2.4. Summary

This chapter described the influence of the federal government on Indigenous policies in Canada, the United States, and Russia. The constitutional provisions in each of these countries have determined the strong federal jurisdiction over Indigenous peoples. Historically, the supremacy of the federal government in affairs with Natives was predisposed by the understanding that Indigenous peoples are dependent on the state. Basically, the central governments took the role of a patron in Indigenous affairs with an attempt to 'civilize' Natives

through various kinds of assimilation policies. The subnational governments of Canada and Russia have some degree of decentralization in the area of Indigenous policy; however, the supremacy clause as it is called in the U.S. and Russia, or paramountcy clause with the same meaning in Canada does not allow their subnational governments to contradict existing federal legislation.

The federal governments of each of these countries have provided special legislation in regard to the traditional occupancy of lands by Native people in the Arctic. The maintenance of these categories of lands was implemented in different ways – the United States and Russia provided federal legislative acts (ANCSA, Federal Laws) as main sources of land regulations. Canada manages Aboriginal lands through the comprehensive land claims agreements that allowed the Inuit people to use their right of Aboriginal title and form Nunavut as a new Canadian territory.

Although the territories in Canada have relatively less autonomy as compared to provinces, the model of 'treaty federalism' helps the Inuit people to defend their interests in comprehensive lands agreements. This model is implemented through claims boards at three levels: federal, territorial, and self-governed Aboriginal governments.

Chapter 3. The Impact of the Oil and Gas Industry on National Policies in Canada, the United States, and Russia

The first part of Chapter Three analyzes the role of oil and gas extraction in national and subnational development of the Arctic regions in Canada, the United States and Russia. How did oil and gas industrialization in the Arctic influence each of these countries? Who controls the extraction and benefits from oil and gas drilling – federal government or region, and how do they interact together in order to provide effective resource management? One of the important parts of the sufficient control of resource extraction is the management of effective partnerships and mutual understanding among all stakeholders, including Indigenous communities. So, this part of the chapter examines the federal-regional policymaking perspectives on oil and gas development for the purpose of determining which management of oil and gas extraction works or would work for each country.

The second part of this chapter examines the existence of state-owned oil and gas companies in each of the analyzed countries, and provides an overview of the main characteristics of national oil companies (NOCs) as a form of enterprise that is integrated into government policy. Hence, theoretically, national oil and gas companies present the federal government and industry all rolled into one. This part of the chapter examines the government-controlled companies in order to determine whether the NOCs are better at negotiations with Indigenous peoples than multinational and private corporations; or if they rather create barriers for their participation in the decision-making process.

3.1. Overview of Oil and Gas Policy in Each Country

3.1.1. Canada

In the late 1980s, Canada signed the U.S.-Canada Free Trade Agreement (later – North American Free Trade Agreement--NAFTA) with the U.S., which facilitated petroleum exports from Canada to the U.S. (Smallman, 2003, p. 256-257). The recent goal of the Canadian government is to outperform the Middle East, which is the main exporter of crude oil to the United States.

In the past, energy experts did not pay much attention to oil sands because of the high cost per barrel and technological challenges in production. However, as recent estimates show, Alberta's reserves are too large to be ignored; they hold the equivalent of 300 billion barrels of oil, which is larger than Saudi Arabia's oil deposits. Due to a lack of exploration risk and declining cost of oil production, Alberta's tar sands attracted large investments (Smallman, 2003, p. 251-253). However, the price for one barrel from the oil sands is still too high to be competitive with the cheap Middle Eastern oil (Smallman, 2003, p. 253).

In 2006, the Prime Minister of Canada, Stephen Harper, called Canada an "energy superpower," referring to various energy sources in Canada, including the large reserves of oil in Alberta's tar sands (Rubin, 2014, June 02). In 2012, Harper announced that the export of tar sands oil is a national priority of Canada. The construction of the Keystone XL Pipeline, which was supposed to carry 830,000 barrels of Alberta's crude oil to the United States, encountered opposition in Washington, DC (Dowie, 2015, February 3). The reason for the conflict was that American environmentalists claimed that Alberta's oil development has potential negative effects on climate change. They assumed that the production of tar-sands bitumen releases high volumes of greenhouse gases. There are still legal battles between Keystone project developers

and environmental groups about tar-sands extraction and climate change issues (Mercer, 2015, May 27). Canadian political observers are concerned that the delay of the Keystone XL threatens the future of Canada's economy. Other U.S. export-oriented projects such as the Northern Gateway Pipeline or the Energy East Proposal have experienced similar political and environmental controversies in Ottawa (Sorensen, 2015, January 5).

Overall, Canadian oil and gas policy is more likely to be focused on its southern tar sands development in Alberta for the purpose of exporting to the U.S., rather than on its Arctic deposits. Nevertheless, the recent discovery of vast shale gas reserves in the central Northwest Territories could redirect government attention to Arctic gas (Weber, 2015, May 22).

3.1.2. The United States

In 2004, the Office of Deputy Assistant Secretary for Petroleum Reserves, U.S. Department of Energy issued a report recognizing oil shale as " strategically important fuels to drive the economy, meet national defense needs, and fulfill global commitments." Also, the Bureau of Land Management concluded in 2005 that it is worthwhile to begin oil shale research and development. The bureau also announced that it had solicited for leasing of federal lands for oil shale projects in Colorado, Wyoming and Utah. Hence, the U.S. agencies de-facto proposed the opportunity to produce domestic shale oil as an alternative to imported crude oil as a part of a new energy strategy. This strategy was also supported by recent technological innovations that could allow extracting shale oil (Bartis et al., 2005, p. 1-2).

Seventy-two percent of the United States' total oil shale is located on federal lands. Another 28 percent of shale oil is on privately owned lands. Thus, the federal government is the most powerful stakeholder in shale oil development, and it can directly control access to the richest parts of oil deposits (Plumer, 2014, January 16; Bartis et al., 2005, p. 9).

The U.S. may become the largest global oil producer by 2017, extracting five million barrels of oil per day, and the volume of production will be dependent on oil prices (Harvard Kennedy School Belfer Center for Science and International Affairs, 2013). However, the U.S. economy is still highly dependent on oil imports, and some oil-producing countries have hostile relationships with the U.S., such as Iran, Venezuela and, increasingly, Russia. Hence, increased domestic shale oil production may be important for the purpose of national security (p. 30-31). However, despite the upcoming shale oil boom, the U.S. still prefers to import oil from the Middle East, due to cheap oil prices (Harvard Kennedy School Belfer Center for Science and International Affairs, 2013). The U.S. has been a partner of Saudi Arabia since 1965 and still has a need for Middle Eastern oil. Some political observers suspect Saudi Arabia of manipulating its oil export prices in order to use them as a policy weapon against the U.S. For instance, Saudi-Arabian oil producers imposed an embargo against the U.S. in 1973 in response to U.S. military support for Israel. Also, recently, it was suspected that Saudi Arabia increased oil production for the purpose of dropping oil prices and negatively impacting U.S. shale oil development (King, 2015, May 29, 2015).

President Barack Obama declared in January 2015 that the U.S. goal is to be less dependent on foreign oil. He also stated, "America is No. 1 in oil and gas." The U.S. passed Saudi Arabia about two years ago in terms of oil production. And we've been the top producer of natural gas for more than two decades." The official statistics show that the U.S. has been the world's largest oil producer since 2012. The energy market consultant group PIRA Energy released a report that showed that the country's production growth was mostly stimulated by shale production (Carroll, 2015, January 21). Therefore, U.S. shale oil development is considered a national priority. However, in May 2015, the U.S. government conditionally

approved offshore drilling in the Chukchi Sea, which holds up to approximately 15 billion barrels of oil, which means there has been some potential interest in Arctic oil and gas in recent years (Davenport, 2015, May 11).

3.1.3. Russia

After the collapse of the USSR, the economic reforms of the 1990s in Russia included the privatization of natural resources. The oil and gas sector was privatized only partially, and one of the first state companies was Rosneft. Other oil companies (Yukos, Lukoil, Sibneft) were called vertically integrated and independent since they were owned by oligarchs such as Mikhail Khodorkovsky, Boris Berezovsky, and Roman Abramovich. The oligarchs had strong political connections; they used their acquaintance with President Yeltsin to support their goals. Also, they had links to private banks (Hill & Fee, 2002, p. 4-5). The era of oligarchs was characterized by collaboration with international companies such as Halliburton, Exxon Mobil, and Shell. Foreign observers of this era of oil and gas industry predicted that Russia would have a significant role to play over the next two decades in helping to diversify world energy supply away from the Middle East, but the euphoria of early 2002 over Russian oil was misplaced. They also recommended that Russian companies pay more attention to international investments and see the opportunity to act abroad (Hill & Fee, 2002, p. 25).

The oil and gas sectors began to play a significant role in the Russian economy when Vladimir Putin came to the power. His political course of centralization of power also included control over Russian natural resources. Putin's second presidential term was inaugurated by the consolidation of mineral resources, particularly oil and gas, and "deprivatization" of oil and gas companies. Oil and gas were declared to be strategic resources, and the new legislation allowed Gazprom and Rosneft to swallow other companies (Moe & Rowe, 2009, p. 108-109). Some

companies were still independent, which means that these organizations produced or supplied gas not 100 percent owned by Gazprom (Lukoil, SurgutNeftegas, TransNafta and others) (Stern, 2005, p. 19). However, Yukos was taken by state-dominated Rosneft as a result of bankruptcy; Sibneft (Abramovich) was purchased by Gazprom; and eventually, in 2013, Rosneft purchased 100 percent of TNK-VR stocks (Rosneft, 2013). Therefore, Putin's period returned control over the gas industry (Gazprom) to the state, or to corporations whose owners are close politically to the government (for instance, Lukoil was used by the government in negotiations with Central Asia) (Pirani, 2009, p. 7).

The new legislation of strategic resources also brought significant changes in the process of foreign investment. The new Federal Law, "About foreign investments in organizations whose activity has strategic character for providing for security and safety of the state," requires special permission from the federal government for any foreign investors who wish to invest in exploration of mineral resources of federal significance in Russia (Article 6) (Consultant Plus, 1996). Though mineral resources in Russia were divided between resources that have federal significance (over 70 million tons of oil and gas amounting to over 50 trillion cubic meters) and other mineral resources, foreign investors are more interested in putting their money in the exploration of large quantities of petroleum (Consultant Plus, 1992). Furthermore, the new legislation complicates the operation of private companies in the petroleum sector and increases the position of state-owned companies (Moe & Rowe, 2009, p. 110).

Overall, the beginning of the new era of petroleum sector development started with total governmental control over the oil and gas resources and their consolidation in governmental hands. Putin's struggle against the oligarchs of the first wave of the 1990s reallocated private shares to the state-owned companies. The reforms of mineral resource legislation in 2008 and

including the oil and gas sector in the list of resources of federal significance made the position of private companies in the European market weaker and provided state control over foreign investment. The federal government owns 50.002 percent of "Gazprom" stocks (control packet) (Gazprom, 2015a) and 69.50 percent of Rosneft's share of Rosneftegas (100 percent of Rosneftegas is in federal property) (Rosneft, 2015).

Owing to Western sanctions and economic crisis since 2014, Russia's oil and gas policy is mostly oriented to Arctic oil and gas. Deputy Prime Minister Dmitry Rogozin publicly called the Arctic a "Russian Mecca." Despite the Western sanctions, the Russian national oil company Rosneft continues to work with Norwegian Statoil on the exploration of offshore Arctic petroleum deposits and on joint technical studies on two onshore assets (Sputnik International, 2015, May 28; Oil and Gas Eurasia, 2015, May 28). Considering the fact that all oil and gas resources are federal property, and that most oil and gas companies are state-controlled, Arctic petroleum development could play a substantial role in the defense of Russian national interests.

3.2. Federal Governments in the Oil and Gas Sector

Are oil and gas companies good or bad for Indigenous peoples? The oil and gas corporations could be divided between National Oil Companies (NOCs), which are mostly state-owned, and International Oil Companies (IOCs), owned by shareholders. However, this difference is not so clear in the modern petroleum industry – some NOCs work closely with IOCs or participate in the global market, as if they were IOCs. At the same time, IOCs are not entirely private; they have millions of shareholders, including individuals, pensions funds, mutual funds and others. Some companies are "mixed" - they have combined shareholder interests, both from the public and the state (Seznec, 2012, p. 45-46).

U.S. oil and gas companies have very broad-based public ownership, as this feature has been associated with the potential for strong growth and revenues. American economists assume that broad ownership helps the companies to expand their operations and geographical scope. Also, public-owned companies can attract more talented employees and improve their management. Transparency for stakeholders forces managers to pay close attention to their companies' efficiency and strategy (Shapiro & Pham, 2011, p. 11-12).

In 2014, so-called "insiders" or individual investors who do not belong to company management owned the majority of the shares -- 65.5 percent of U.S.-based publicly traded oil and gas companies. These shares are held in public and private pensions plans (28.9%), IRAs (individual retirement accounts) (17.9 %), and 18.7 percent is owned and managed by individual investors who do not belong to industry management. Asset management companies own 24.7 of the shares, institutional investors (banks, insurance companies, foundations, and endowments) hold 6.9 percent of the shares, and the rest of the shares – 2.9 percent -- are held and managed by petroleum industry executives (Shapiro & Pham, 2011, p. 1-2). Hence, middle-class households in the U.S. mostly dominate oil and gas industry ownership by investing in mutual funds, IRAs, and pension plans. It also means that the United States has no national oil corporation.

Similarly, the oil and gas industry in Canada mostly consists of public-owned petroleum corporations and IOCs, such as Imperial Oil, Suncor Energy, Chevron Canada, Husky Energy and others. None of them is included in the list of Canadian government-owned Crown corporations (Government of Canada, 2015c). Since Petro-Canada was privatized in 1991 (Government of Canada, 2015c), the Crown corporations do not have a large representation in the oil and gas market of Canada (Ministry of Natural Resources Canada, 2014).

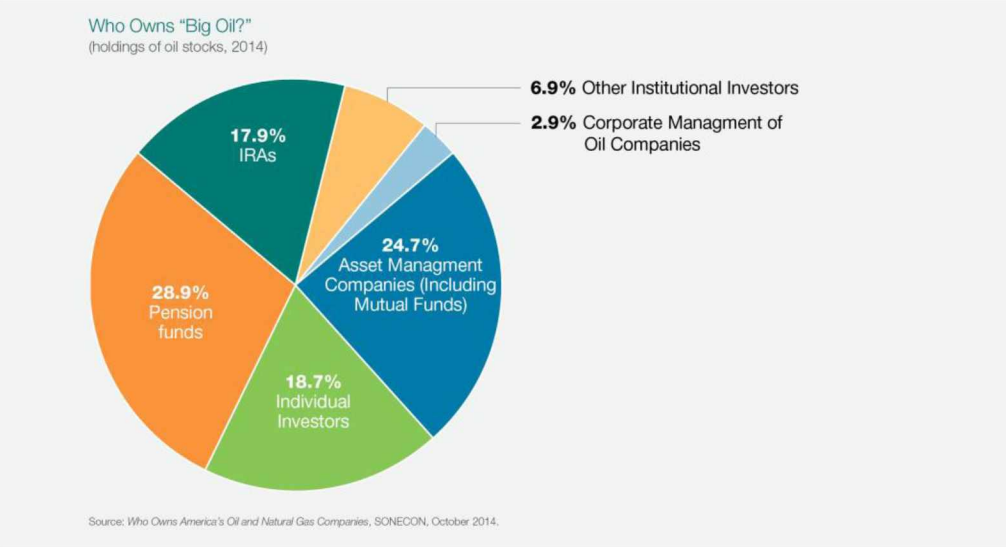

Figure 3.1. Ownership of U.S. Oil and Natural Gas Companies, 2014

Source: Shapiro and Pham, 2011

Unlike Canada and the United States, Russia went through a renationalization of its petroleum industry. After the collapse of the Soviet Union, most of the national industries were transferred to private owners (Remington, 2011, p. 198-199). However, during the second presidential term of President Putin, the conception of energy management was reconsidered and as a result, state control over Russian mineral resources increased (Moe & Rowe, 2009, p. 108-109). Hence, the petroleum industry in Russia was recently renationalized (Frum, 2012, October 30).

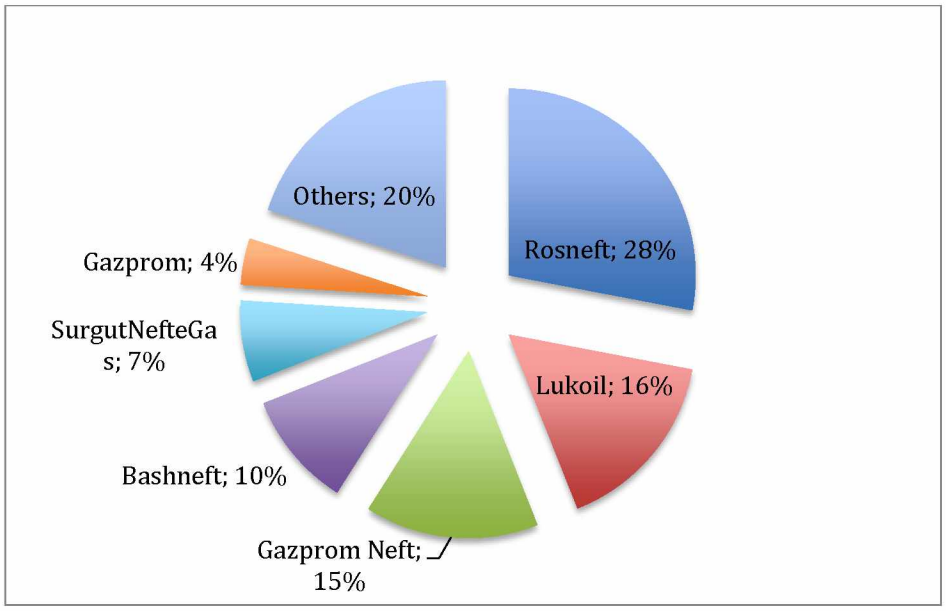

Figure 3.2. Structure of Oil Refining in Russia in 2012

Source: Gorbunov., 2013, May 13.

Analysis of oil refining in 2013 showed that state-owned Rosneft dominates the oil market in Russia. The other NOCs Gazprom Neft, Bashneft, and Gazprom control the majority of the remaining part of the oil industry.

The principle of equal access for all oil and gas companies to subsoil activities, which was announced by the former Prime-Minister Mikhail Kasyanov, was broken by his successor Mikhail Fradkov in 2004. Fradkov's position was against private access to pipelines. Despite his goal, private pipelines still exist in Russia, such as the Shell pipeline in the Sakhalin-2 project (Andreyeva & Kryukov, 2008, p. 248). However, the process of swallowing private companies by state-owned enterprises is still continuing. For instance, in 2013, Rosneft purchased 100 percent of TNK-BP stocks (Rosneft, 2013). Some analysts notice the possibility of pressure from the government on private companies (Andreyeva, Kryukov, 2008, p. 248). Therefore, there is the great probability that state-owned Rosneft and Gazprom will obtain licenses for the

development of large offshore projects such as Shtokman and Prirazlomnoye (Andreyeva & Kryukov, 2008, p. 249).

Hence, a high level of federal dominance in the market characterizes the Russian petroleum sector. Also, the Russian government highly prioritizes its presence in the Arctic North, using the largest oil and gas companies, Rosneft and Gazprom, as levers in its hands for oil and gas drilling (Andreyeva & Kryukov, 2008, p. 284).

One question, which is important to ask, is whether NOCs were established and managed to protect the interests of the people of the Russian Federation, including Indigenous peoples or not? (Seznac, 2012, p. 45-46). Are the NOCs better in negotiations with Indigenous peoples than IOCs?

There are a few features of national oil companies that have arisen over the past thirty years of history:

1). Commercial inefficiency. The NOCs are mostly inefficient in this area, with few exceptions. Because of the large amount of government funding, monopolization, and their size, the NOCs often become involved in other national economic, social, and political objectives, besides their goals in the petroleum industry. When oil prices fell in 1986, the NOCs were expected to accomplish both commercial and non-commercial objectives. As a result, some NOCs have disappeared, changed their objectives, or became fully privatized. However, most of them survived and remained in their countries (McPherson, 2003, p. 185-186). Jean-Francois Seznec, the American political scientist, assumes that the unsuccessful NOCs are mostly overwhelmed by government control, which wants them to maximize income. In contrast, the IOCs, such as Exxon Mobil, Shell, BP, are more likely to maintain better management of their fields. The IOCs generally have more advanced technology. However, some NOCs, such as Statoil and Saudi

Aramco, can keep their distance from state interference, and thus, they are more financially independent and commercially successful (Seznek, 2012, p. 58). Another reason for the inefficiency is a lack of competition, which affects the quality of production (McPherson, 2003, p. 188).

2). Non-commercial objectives. Social, economic and political noncommercial objectives are usually included in the NOCs agendas. They are usually related to socioeconomic development of the field: a) job creation; b) development of local technical, commercial, and managerial capacity in the oil industry; c) construction of social infrastructure: hospitals, local schools, and related community services; d) regional development – construction of airports, local roads, telecommunications; e) the government can ask to sell petroleum at prices that are below the market levels; f) the state can ask to borrow money for non-oil activities (McPherson, 2003, p. 189-190).

3). Weak governance. The NOCs often lack transparency, accountability, commercial oversight, and developed systems of management. Having only one shareholder – the government, the NOCs do not have as much pressure to be transparent in their activities. Also, in order to strengthen political influence, politicians can change the NOC's organizational structure. For instance, they can set up a politically represented Board of Directors without required professionalism. In addition, usually due to the requirement to return all revenues from extraction to the state, the NOCs are highly limited in their abilities to plan future investments or operations. In simple words, NOCs mostly serve as "cash cows" for the government (McPherson, 2003, p. 190-191).

4). Cash requirements. Due to expensive maintenance, the NOCs can compete for public funds with other sectors of the governmental budget, such as education, health, transportation and

others. As a result, some social needs may be unmet, or governments delay industry investments (McPherson, 2003, p. 192).

5). Conflict of Interest. NOCs can be expected to direct oil and gas policy. Even if the country has government agencies and ministries, they often do not have appropriate expertise. Then, the government delegates oil and gas policy decisions to the NOC. It is difficult for the company to play on the oil market and to participate in the policy-making process at the same time (McPherson, 2003, p. 193-194).

Therefore, many NOCs are highly dependent on government funds, unless they operate independently, such as Statoil in Norway. Because of their strong connection with government decision-making, the NOCs could be closely involved in and even lead the development of the oil and gas industry in their countries. Moreover, in many cases, the NOCs also have obligations to make decisions beyond their commercial interests, such as design and management of social programs, which are not usually related to exploration and development of oil and gas. For instance, Gazprom Neft initiated the social project "Hometowns" in order to invest in the socioeconomic development of Russian urban centers (Gazprom, 2015b). Hence, the NOCs work closely with their governments, and they could benefit from state support. But, at the same time, they could be controlled by state policy, and they often need to choose between national and commercial interests.

3.3. Oil and Gas Revenues and Federal Budgets

Are oil and gas tax revenues a federal or subnational prerogative? There are many tax and nontax instruments for the government to collect revenues from the petroleum industry. Most countries use production-based or profit-based instruments to collect a share of the government.

The governments of some countries take an equity interest in petroleum projects, which help them to be more involved in the industry (Sunley, Baunsgaard & Simard, 2003, p. 154-155).

An equity interest of the state can be implemented in several forms: 1) a full working interest – paid-up equity on commercial terms; 2) paid-up interest on concessional terms, when the government purchases its equity share at a low price; 3) a carried interest, which means that the government pays for its equity share out of production proceeds, including an interest charge; 4) tax swapped for equity, where the government's equity share is offset against a reduced tax liability; 5) equity in exchange for a noncash contribution, for instance, government subsidies for construction of social facilities; 6) "free" equity, when the government can reduce taxation in exchange for a share. The equity interest of the government can have economic (cash benefits from oil extraction) and non-economic implications. The non-economic reasons can be dictated by nationalistic views; for instance, when the government increases or decreases oil and gas export prices for the purpose of regulating its foreign policy (Sunley, Baunsgaard & Simard, 2003, p. 164).

Most countries receive benefits from government shares, using production-based or profit-based tools. Using production-based instruments, governments receive a guaranteed minimum payment for their mineral resources. Profit-based instruments are oriented toward a project's gain, and they can either increase or decrease the governmental share, depending on the commercial success of the project. Besides these two types of instruments, there are also bonuses and rental payments, which mostly serve to encourage oil and gas companies to explore and develop certain areas. Bonuses are usually used in highly prospective and competitive areas with many investors. Rental payments are helpful if the government wants to encourage enterprises to

develop their areas rapidly, or relinquish their rights (Sunley, Baunsgaard & Simard, 2003, p. 154-155).

The revenues from royalties can be received as soon as production begins. Royalties are charges levied directly on the extraction of the resource itself (Boadway & Keen, 2010, p. 27). Royalties can be either based on the value of oil and gas extracted or on the volume of oil and gas extracted. Royalties guarantee that the government will receive a minimum payment. In the case of royalties, it is important for the government to find an appropriate method to estimate the value of the extracted oil and gas ((Sunley, Baunsgaard & Simard, 2003, p. 155-156).

Corporate income taxes are generally expected to be the same for oil and gas as for other companies, but in some countries, they are higher (Sunley, Baunsgaard & Simard, 2003, p. 156). Resource rent tax is imposed only if the project is profitable. It means that if the government establishes only this type of taxation, it will not receive any revenue from less profitable projects. Thus, resource rent taxes are usually combined with royalties and a standard profit tax (Sunley, Baunsgaard & Simard, 2003, p. 159).

Production sharing is a system different from tax/royalty as it requires the ownership of mineral resources from the government. Oil and gas companies sign contracts to extract and develop the resources in return for a share of the production. Signing a contract, an investor serves as an "assistant" of the government for resource development. In this model, the government bears the risk, cost, and expense of the extraction. The production-sharing agreement usually has conditions regarding "cost oil," an amount of oil needed to recover costs of production; and "profit oil," the remainder of the oil, which is divided between the government and the contractor, according to a contract-established formula (Sunley, Baunsgaard & Simard, 2003, p. 160-161). Royalties could also be part of a production-sharing agreement. As

an alternative to royalties, the government can set up a limit on cost oil; this limit ensures receiving profit oil (Sunley, Baunsgaard & Simard, 2003, p. 161).

There are a few forms of revenue assignments of oil tax revenue:

a) Royalties from subnational ownership of resources. If subnational governments own natural resources, they do not need to use taxation, the petroleum revenues come to their budgets in the form of royalties. This type of revenue assignment is specific to Canada, but in a limited way extends to Alaska;

b) Subnational legislation and implementation of taxes. Subnational governments have a right to adopt tax legislation and collect taxes on mineral resources (United States, Canada). Subnational taxation may be exclusive or concurrent with federal taxation, and there could be some limits introduced by national laws, for instance, on tax rates;

c) Subnational surcharges on national taxes. In this case, subnational governments charge the same tax rate as the federal government. In Canada, the provinces may voluntarily adopt the federal income tax rate;

d) Tax sharing. This is the practice of returning tax revenues from particular taxes by the national government to subnational governments, depending on where the revenues originated;

e) Revenue sharing. In the system of revenue assignment, the federal government shares revenues with subnational governments. The amount of revenue sharing is based on a formula. Hence, there is no subnational fiscal autonomy (McLure, 2003, p. 205-207). This situation characterizes the fiscal regime in Russia (in regard to oil and gas tax base).

3.3.1. The United States

In the United States, the states receive resource revenue bases. The states own the resources, except on federally owned land, but they share the income tax base with the federal government. The State of Alaska levies a property tax, a severance tax ranging from 12 ¼ percent to 15 percent on oil, royalties, a production tax surcharge for hazardous spills; and corporate income tax. The calculation of corporate income tax is based on a three-factor formula: 1) the percentage of corporate sales and tariffs from extraction in Alaska; 2) the volume of production; 3) the percentage of Alaskan property represented by Alaska holdings. Hence, the State of Alaska as a subnational government has authority over the fiscal policy regarding oil revenues in its territory (Ahmad & Mottu, 2003, p. 234-235).

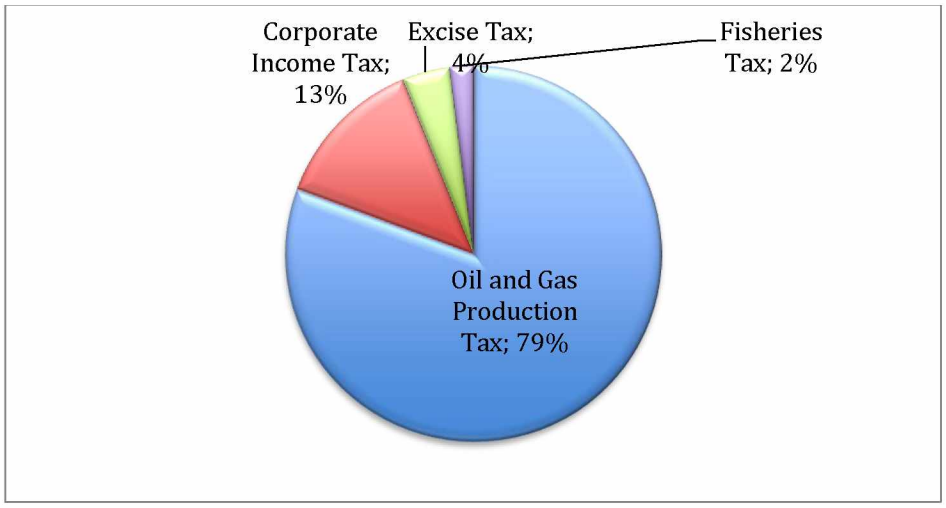

Figure 3.3. Alaska's Oil and Gas Revenues by Tax Program in 2013.
Source: Scenarios for Energy and Resource Development on the North Slope and Adjacent Seas. Oil and Gas Revenues Alaska State Economy (Alaska Center for Climate Assessment and Policy, 2014).

3.3.2. Canada

Similarly, Canadian provinces levy taxes and royalties on natural resources. However, due to high oil and gas revenues, the oil-producing provinces, such as Alberta, are excluded from the

grants of the federal equalization program. In order to compensate for this disparity, the oil-rich provinces usually set up heavy taxation on petroleum industries, and relatively low taxes on other revenues, such as on sales and incomes. The example of the oil-rich Canadian province Alberta shows that the oil revenues were stable and contributed a significant portion of the provincial budget between 2002 and 2014. The official website of the Government of Alberta shows only long-term statistical information on budget revenues in order to highlight how much the province is dependent on oil revenues and energy prices (McLure, 2003, p. 235).

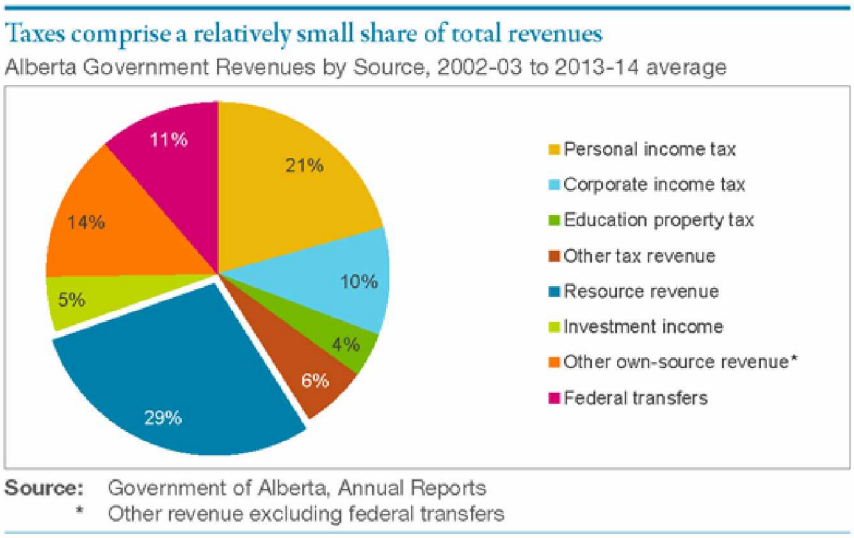

Figure 3.4. Alberta Government Revenues from 2002-03 to 2013-14.

Source: Government of Alberta, 2015

3.3.3. Russia

Russian political scientists E.N. Andreyeva and V.A. Kryukov have analyzed the distinct "Russian model" of mineral resources management. They emphasized three principles of Russian federal government control over oil and gas: centralism, corporatism and paternalism. Centralism means the consolidation of decisive and legislative authority at the federal level. Corporatism describes the increasing dominance of large monopoly companies over all the exploration of offshore oil and gas deposits in the Russian Arctic continental shelf. And, last,

paternalism means the significant role of the federal government in the policymaking process on the management of oil and gas exploration in the regions; which refers not only to the development of oil and gas, but also to the resolution of social problems (Andreyeva & Kryukov, 2008, p. 246).

Subsurface resources are state property and as such can be allocated for exploration and exploitation for a temporary period and for royalties (Andreyeva & Kryukov, 2008, p. 252). Modifications to the Underground Resources Law since its creation in 2001, made some changes in payments for land use, and introduced a tax on production. The reforms made adjustments to how taxes were distributed between budgets. Eventually, the taxes from production have been directed toward the federal budget (Andreyeva & Kryukov, 2008, p. 255).

Table 3.1. Russian Oil and Gas Revenue Flows (Federal/Regional as of 2015)

Tax base assignment	Federal	Regional
1. Extraction tax		
Oil	100%	
Gas	100%	
Oil and gas shelf and offshore	100%	
2. Export duties (oil and gas revenues) (Article 96.6 of BC)		
Oil and gas	100%	
3. Severance tax		
Oil	100%	
Gas	100%	
4. Corporate income tax (production-sharing agreement)	20%	80%
5. Royalties (production-sharing agreement)		
Gas	100%	
Oil	95%	5%
6. Corporate income tax (Article 284)[2]	2% from total corporate income tax (20%)	18% from total corporate income tax (20%)

Based on Andreyeva and Kryukov's model (Andreyeva & Kryukov, 2008, p. 247). Renewed in April 2015 on accordance with the current legislation.

Source: Articles 50, 96.6, of Budget Code of the Russian Federation (Consultant Plus, 1998), Article 284 of Tax Code of the Russian Federation (Consultant Plus, 2000).

According to the table above, oil and gas tax revenues are under the exclusive authority of the federal government. The budgets in petroleum-producing regions are mostly dependent on corporate income taxes revenues from oil and gas corporations and production sharing agreements. For instance, 46 percent of the revenues for one of the largest oil-producing regions, Khanty-Mansi Autonomous District, come from corporate income taxes. Khanty-Mansi

[2] In accordance with Article 284 of the Tax Code, corporate income tax constitutes 20 percent of corporate income. Both federal and regional governments levy corporate income tax. Eighteen percent of this tax goes to regional governments; 2 % goes to the federal government.

Autonomous District has the longest history of oil extraction in Russia, strong governance, and close relationships with all stakeholders (Stammler & Forbes, 2006, p. 50).

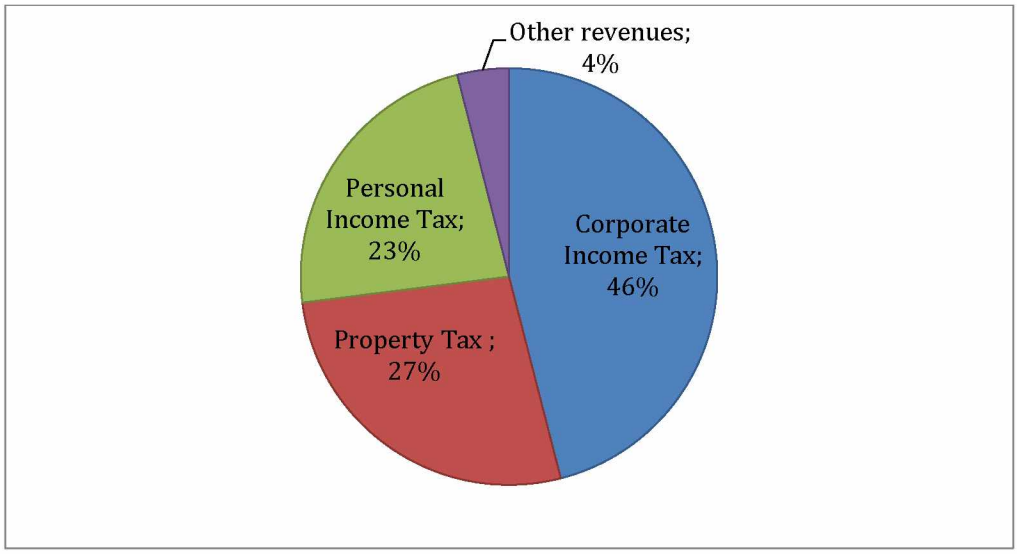

Figure 3.5. Khanty-Mansi Autonomous District Budget Revenues for First Nine Months of 2014
Source: Khanty-Mansi Autonomous District's Duma, 2015

Given that the federal government of the Russian Federation receives all the direct benefits from oil and gas extraction, the revenues from the extraction of mineral resources could be a significant part of the federal budget. The analysis of federal revenues of the Russian Federation shows that resource rent taxes constitute 20 percent, which is not the largest part of the budget. Nevertheless, according to data from the Federal Customs Agency, fuel and energy products formed 73.3 percent of Russian exports in 2014 (Federal Customs Agency of Russia, 2015). Thus, some export tax revenues (38%) could be counted as resources revenues. Hence, oil and gas revenues constitute more than 50 percent (57% or less) of federal revenues.

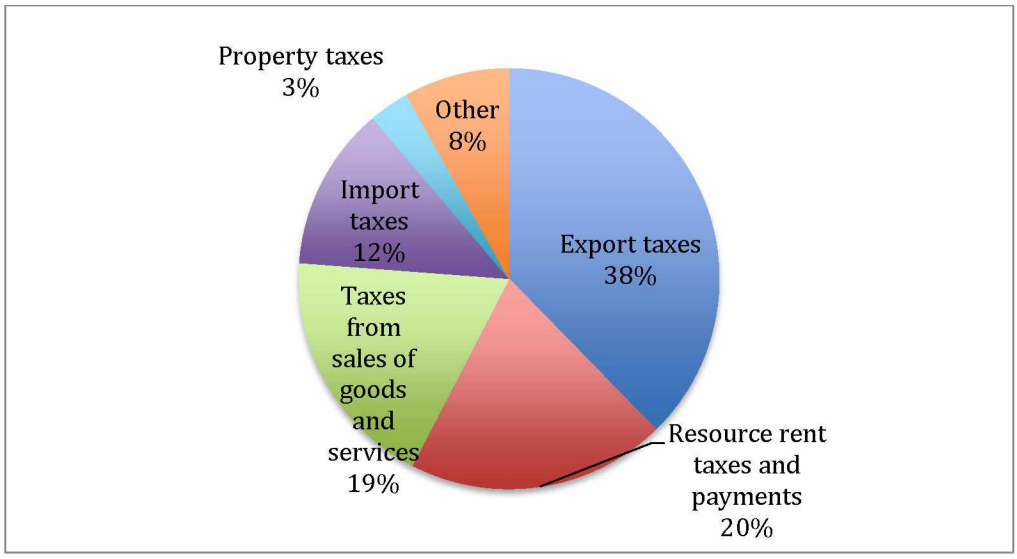

Figure 3.6. Federal Budget Revenues of Russia

Source: Ministry of Finance Russia, 2015

3.4. The Role of the Oil and Gas in the Arctic regions

3.4.1. Canada

The upcoming Mackenzie Gas Project (MGP) in the Mackenzie Delta led to many discussions about how this project would impact regional development. Would the pipeline bring the same benefits to Northwest Territories as it brought to Alaska? Although the pipeline construction has not been started yet, there are many different perspectives on the federal and provincial governments, oil and gas companies, interest groups and Aboriginal peoples of Mackenzie Delta.

The Northwest Territories have slightly different relations with Ottawa than the oil-rich province of Alberta. Banta (2006) argues that there is not so much potential for NWT to receive revenues from northern resource development as it was in Alberta. Although Stephen Harper, the prime-minister of Canada, talked about "the potential to transform the North into what some call the next Alberta" with "fiscal independence" and "growth and prosperity of families and

communities" (p. 80), there is less potential for economic growth in the NWT than there was, for instance in Alberta. There is a difference between the territories and provinces. In northern Canada, most of resource revenues go to the federal government – in 2005-06 $224 million CAD in oil and gas and diamond royalties went to Ottawa, over and above federal taxation. The Council of the Federation's Advisory Panel on Fiscal Imbalance, cited in Banta, noted that when there is development in the territories, a disproportionate share of the benefits flows to the federal government. As a result, the Canadian North remains weak and dependent on fiscal transfers. The lack of infrastructure and social services also challenges economic development in the North. Unfortunately, the federal government has failed to invest northern revenues in the construction of infrastructure in order to make potential oil and gas projects economically viable. The federal interest in northern development depends on resource prices; fluctuations in the resource market determine whether or not northern resources will become a national priority. In addition, Northern Canada does not have permanent fund that could provide ongoing revenues as in Alaska or Alberta, because northern territories simply do not have as much autonomy as provinces or states (Banta, 2006, p. 81-83).

The transfers from the federal government to territories (Territorial Formula financing program, similar to equalization funding program for provinces) could cause a lack of attention to the northern resource development. Ottawa gives more money than it receives in resource revenues. Annually, NWT takes $800 million CAD from federal transfers. However, these transfers just aggravate dependency and poverty instead of building a sustainable economy. Therefore, for the purpose of making NWT economically viable, Ottawa has to reconsider economic relationships with its territories (Banta, 2006, p. 84-85).

However, despite the doubts about the commercial viability of the MGP for regional development, provincial officials strongly encourage pipeline construction. The premier of NWT, Bob McLeod, calls it a "nation-building project," hoping that Canada will provide enough support for MGP. He also emphasizes the role of the fiscal agreement between the federal government and the government of NWT for the MGP as an important step in project implementation (Government of Northwest Territories, 2014, January 8).

The MGP is going to be the largest industrial project in the NWT. Very limited oil drilling in the Mackenzie Delta in the Beaufort Sea area began in the 1960s and the 1970s and is still in the process. The current oil and gas activity is located on four fields in the southern part of NWT, the Norman Wells oil field in the central Mackenzie Valley, and the Ikhil gas field in the Mackenzie Delta (Nuttall, 2009, p. 75).

The management of oil and gas resources on Crown lands north of 60 N (except Yukon) is under federal control. The Canada Petroleum Resources Act and its regulations establish the taxation regime. The National Energy Board is the independent federal agency that has a right to approve operations (Nuttall, 2009, p. 75).

When petroleum extraction started in the NWT, there were no legal obligations for oil companies to communicate with Aboriginal communities. The drilling permits were granted by Ottawa, which means that many times companies did not communicate with the provincial government. Thus, the jurisdiction over oil drilling was mainly in the hands of the federal officials. However, later the industry attempted to communicate with Aboriginal peoples, organizing voluntary programs. Although, in the beginning, the communities mostly ignored these meetings, later, the communication was established. The idea of cooperation was

completely new both to the Indigenous communities and to the companies; these relations were not fostered by the government (O'Neil, 1997, p. 150-153).

In regard to employment, oil and gas development shows that although a Northern hiring quota of 40 percent Aboriginal hire was supposed to help local Northern people to be involved in the wage economy, Native employees usually were hired only in short-term job positions. As a result, the 40 percent hire did not happen (Zavitz, 1997a, p. 178-179). Northern employment divided applicants into two categories: priority one – Aboriginal peoples, priority two – northern residents, but not Aboriginal. There was a point of view that the oil companies in the Beaufort Sea could hire Northerners just to get quotas. Moreover, some young employees prefer not to finish a high school because they could receive good job position from oil companies without a high school or college degree (Zavitz, 1997a, p. 178-179). The oil companies that operate in the Beaufort Sea have a percentage of Northerners they were planning to hire, and they distinguish them by their skills, gender, age and race in order to provide proportional representation. The reaction of communities was partly negative – a person cannot be hired without skills and experience, only because he or she is Aboriginal (Zavitz, 1997a, p. 181-182).

The impact of oil and gas development in the traditional economy was mostly the same as in Alaska – traditional subsistence was affected by the wage economy of Southerners (people from the southern Canadian provinces, usually oil workers) and, as a result, a mixed economy developed. Native workers combined their traditional lifestyle with industry jobs (Zavitz, 1997b, p. 173).

Overall, federal control over resource extraction in NWT led to a lack of understanding between Southern policymakers and Northerners. The experience of the current drilling shows that Ottawa fails to deal with local politics, controlling everything from its central position, not

from the local. In Alaska regional development went well, because the state is primarily in control of oil extraction. In the NWT case, the excessive top-down approach of the federal government led to the failure of the province and its residents to benefit from industrial development.

3.4.2. The U.S. Model

The revenues from oil development on the North Slope of Alaska expanded government programs, and stimulated savings and capital spending. The state has the right to levy several types of taxes in regard to oil extraction: corporate income tax, oil and gas production tax, and oil and gas property tax (Alaska Department of Revenue Tax Division, 2015). According to the report of the Alaska Department of Revenue Tax Division, revenues from oil and gas production (USD $2,718,297,646), oil and gas corporate income (USD $336,565,993), and oil and gas property (USD $128,085,796) contributed the most to total fiscal revenues in fiscal year 2014 (Alaska Department of Revenue Tax Division, 2014). Therefore, the development of Alaska is highly dependent on state-owned oil and gas production.

The oil revenues played a big role in state employment from the 1970s to 1990s. Government employment in Alaska was much higher than the U.S. average– 38 percent in 1970, 32 percent in 1980, and 30 percent in 1990 against 18 percent in 1970 and 1980, and 1990 in the U.S. overall. (Rogers, 1999, p. 26). In 2012, Alaska ranked second among the states with the most state and local public employees per capita, excluding education (Governing, 2012).

The discovery of oil at Prudhoe Bay in 1968 made a great impact on the Alaska Native land claims settlements, which led to the adoption of ANCSA in 1971 and later, of the Alaska National Interest Lands Conservation Act (ANILCA) in 1980. Leighton and Smith, cited in a 1986 article by Gary Anders, emphasized four patterns of social change that happened with

Alaska Natives, when the oil economy came to their lands: 1) a shift from the interior, independent traditional-subsistence economy to a cash economy with a necessity to be dependent on the larger social group; 2) recognition of a higher authority in the larger social group, and dependence on him/her; 3) changes in values, ideologies, and living principles caused by the market economy; 4) secularization of life with the division of religious, work, and other human activities (Anders, 1986).

The construction of the pipeline went rapidly in the 1970s when construction employment doubled and reached a peak in 1976. The increase in oil production and employment predictably caused a rise in population from 308,500 in 1970 to 539,600 in 1985. The private sector also benefited from oil development, mainly from infrastructure improvements and expansion, construction of facilities, and housing (Rogers, 1999, p. 26-27).

In the late 1980s, the Advisory Commission on Intergovernmental Relations placed Alaska among the states with the highest revenue-raising capacity. This capacity was mostly built on oil taxation, which could be vulnerable because it is a nonrenewable source. The Alaska Permanent fund created in 1976 by a constitutional amendment was supposed to represent the state's source of resource wealth by producing income investments. At least 25 percent of oil revenues are placed in this Fund. The Fund is used for both savings and spending, and it is managed by state-owned corporation Alaska Permanent Fund Corporation (McBeath & Morehouse, 1994, p. 72-73; Alaska Permanent Fund Corporation, 2015).

Unlike other oil-producing states, such Oklahoma and Texas, where private owners of lands constitute most of the constituency of the oil industry, and they are supported by investors, suppliers, service businesses, and other stakeholders, the State of Alaska owns and controls most

of the oil-producing lands. Thus, the industry mostly deals with state officials (McBeath & Morehouse, 1994, p. 71).

The oil industry has quite strong political influence in Alaska. For instance, the industry plays a role of policy advocate in Alaska, donating more money to election and issue campaigns than any other group. Also, the industry has been the state's most effective lobbyist (McBeath, Berman, Rosenberg & Ehrlander, 2008. p. 241-242).

The ANCSA corporations are mostly interested in contracts with oil companies in order to make profits; the village corporations and the Arctic North Slope Borough are concerned about community development, a subsistence livelihood, and protection of the rights of Indigenous people. The adoption of ANCSA in 1971 made Alaska Natives important players in the land, natural resources and environmental policy-making processes. Most Natives in rural areas are beneficiaries who hunt and fish for subsistence purposes. The fact that ANCSA corporations own lands and rights to subsurface resources on their lands give them the power in negotiations with other stakeholders. However, the interests of Alaska Natives can hardly be viewed as one political block. Individual Alaska Natives and the various peoples, or tribes, vary in their perspectives on oil and gas development. For instance, they are split on the question of whether exploratory drilling should take place in the Arctic National Wildlife Refuge (Mikkelsen, Haley & Øygarden, 2008, p. 149-150; Gladden & Austin, 1999, p. 185).

Federal and state government interests are also divided: oil revenues constitute the primary source of revenue for the state government, and the federal government is more likely to be interested in rapid development in order to provide domestic energy supply and national security (Mikkelsen, Haley & Øygarden, 2008, p. 149-150).

However, it should be noted that world oil prices affect state oil revenues even more than taxing policies. For instance, fall of oil prices on the world market in 1980s led to a decrease in state income from $5 billion per year in 1982-86 to $3.3 billion in 1988 (Rogers, 1999, p. 27). So, fluctuation of prices on the oil market affects the same sectors that usually benefit from oil revenues such as employment, government subsidies and programs, transportation, infrastructure and others. It should be said that development of State of Alaska cannot be separated from global, national and regional politics (Rogers, 1999, p. 30).

3.4.3. The Russian Model

The Soviet Union was producing the largest amount of oil in the world. After the collapse of the Soviet Union, oil extraction declined by 50 percent. Later, between 1999 and 2004 industrial production began to rise again. In 2004, Russia was the largest producer and exporter of oil, and the second producer and exporter of gas. The Rosneft national company mainly controls the extraction of Russian oil deposits (Laruelle, 2013, p. 149; Stammler & Forbes, 2006, p. 49).

The Western Siberian oil and gas reserves constitute most of the oil resources in Russia. There are giant oil fields in the Nenets Autonomous District (NAD), Khanty-Mansi Autonomous District (KMAO), and the Yamal-Nenets Autonomous District (YNAD). Due to rapid oil and gas production, West Siberian regions have experienced permanent connectedness of their infrastructure with the central part of Russia, mostly through railway links. However, there is still no railway in NAD. The rapid industrialization in West Siberia in late the 1960s led to intra-country migration, induced by the state, and to the subsequent domination of non-Native populations in Western Siberia (Stammler & Forbes, 2006, p. 52).

After the collapse of the Soviet Union, and the subsequent shift from a planned to a capitalist economy, new Russian legislation about subsurface extraction rapidly changed life in the petroleum-rich regions in Russia. The Law "About Subsurface" set up the new principles of subsurface extraction such as paid use of mineral resources, equal access for all entities, licensing, transparency of taxation, and joint resource management by the federal and subnational governments (Kryukov & Tokarev, 2005, p. 20-21). However, at the same time, the regions received more responsibility in social, economic, and resource management issues than before. For instance, due to the presence of a planned economy, the former Soviet model of enterprise has some features of corporate social responsibility. This means that the industry enterprise was responsible for the construction of social infrastructure such as housing, electricity, public baths and other social facilities for industry workers. Since the USSR collapsed, this responsibility moved to regional and municipal authorities (Stammler & Wilson, 2006, p. 17).

Because regional governments started to receive oil and gas revenues, the living standard in Western Siberia substantially increased. Similarly with Alaska and its Alaska Permanent Fund, Western Siberian petroleum-rich regions initiated the creation of investment resources that were subsequently spent on the infrastructure building, such as road and bridge construction (Kryukov & Tokarev, 2005, p. 22). However, since the amendments of 2005 in subsurface legislation, most oil and gas revenues go to the federal government (Kryukov & Tokarev, 2005, p. 27).

Besides demographic changes, there were also changes in Indigenous economies – industrial development led to the coexistence of the oil and gas industry and Indigenous communities. In this context, it should be noted that Western Siberian case differs in some ways

from Alaska and Canada. First, after the establishment of the USSR, Indigenous economies were collectivized, and formed in accordance with a unified Soviet enterprise. Soviet industrial development required cheap local food for workers, and the Native collective farms and northern tundra provided a so-called giant open-air meat factory as a food source. Second, the Soviet planned economy differed from the Western capitalist model; particularly, it was not as much based on cash, so the non-Native economy brought by oil workers to Western Siberia was different from the Canadian and American experience. The socialist government provided subsidies for the traditional economy, giving free education to Indigenous and local peoples and supporting transport and communications (Sirina, 2009, p. 189). Stammler &Wilson also highlight the common idea of "mastering of the North" that was popular in the Soviet times. This idea introduced a symbolic sense of unity between very diverse land users, including the government, companies and local Indigenous communities. Gazprom attempted to revive this legacy, hiring senior Indigenous leaders to organize their relations with the local populations (Stammler & Wilson, 2006, p. 19).

This coexistence model continued to develop even after the collapse of the Soviet Union. Reindeer herders and fishermen established cooperative relations with oil and gas workers, providing them with local food and bartering for supplies from extractive companies (Stammler & Forbes, 2006, p. 52).

However, despite the success of the coexistence model, the Indigenous peoples of Western Siberia were displaced from their lands because of petroleum development. The environmental damage and a lack of ecological care by the Soviet government caused degradation of their reindeer pastures, hunting, and fishing grounds. The lack of monitoring, repair and replacement

of pipelines also caused many problems with the environment, as did the flaring of waste gas (Stammler & Forbes, 2006, p. 52-53).

Stammler and Forbes (2006) argue that the model of coexistence in Western Siberia was caused by several factors: the role of the government, the presence of multinational oil companies, and the level of Native empowerment. After the collapse of USSR, the KMAD was relatively politically stable because of having the same governor for more than ten years. The governor's administration closely collaborated with the oil industry in order to establish resource regulation in a top-down manner. The oil industry has been represented mostly by Russian companies, including Surgutneftegas, Yukos, and its successors, TNK-BP (purchased by Rosneft) and Lukoil. The regional government sponsors and cooperates with local Indigenous associations such as Spaseniye Yugri. This Indigenous organization was organized in order to preserve traditional lands and cultures of the Indigenous peoples of KMAD, to protect their rights and interests, and also in order to collaborate with the regional government (Spaseniye Yugri, 2015) (Stammler & Forbes, 2006, p. 52-53)

In YNAD, the relations between the government, Indigenous peoples and oil and gas corporations are organized in a similar manner as in KMAD. Stammler and Forbes (2006) suggest calling the Indigenous associations, which were organized in both regions, GONGOs (government-organized non-governmental organizations), rather than NGOs (p. 56).

However, the weaker position of the regional government in NAD since the 1980s led to the involvement of many multinational companies and joint ventures in oil development, such as Conoco Philips, Total Fina Elf, and a joint venture between Conoco Philips and Lukoil. Therefore, NAD has more international influence from the West than other regions in Western Siberia. This situation also caused the active collaboration of the local Indigenous association,

Yasavey, with international NGOs, such as International Work Group for Indigenous Affairs. Yasavey aimed to provide negotiations among all stakeholders in a roundtable discussion format. The leading principles that were taken among these discussions sounded more Western than Russian: neutrality, objectiveness, transparency, and monitoring of project performance. Unlike the Indigenous associations in KMAD and YNAD, the Nenets Indigenous activists decided to discuss specific problems of industrial oil projects. The weak governance in NAD also led to a lack of strong legislation related to the effects of oil and gas development on Indigenous peoples. The Indigenous association in NAD attempted to regulate these issues using "bottom-up" approach, but this method needs neutrality of each participant in order to give voice to all opinions. In the beginning, when the Indigenous association collaborated with the oil workers from the Association of Geologists, this approach worked. However, since the Association of Geologists ended its partnership, it has failed. The idea of round tables in NAO did not attract much support from companies or the regional government. The companies referred to their corporate regulations as the primary basis of dialogue, and the NAD administration also preferred to avoid collaboration with Indigenous peoples (Stammler & Forbes, 2006, p. 56-57; Stammler and Wilson, 2005, p. 25).

Overall, Stammler and Forbes (2006) assume that the level of political stability in all regions caused these differences between the relations of government, corporations, and Indigenous peoples in regard to oil and gas development (p. 57). It should be noted that the bottom-up approach as in NAD did not work efficiently in Russia, as well as the top-down method in KMAD and YNAD. Regions with strong regional governance established top-down systems of cooperation between the oil industry (primarily national oil companies), the government, and Indigenous communities. The regional governments have the greatest power in

these relations, establishing the institutional (the Indigenous associations, created by the government) and legal framework (regional legislation) for effective and close collaboration between stakeholders. By contrast, weaker regional governance in NAD made resource development in the region more open to multinational corporations. The government did not initiate the creation of Indigenous organizations in NAD. Thus, the Indigenous associations in NAD more likely can be defined as social organizations that were created by themselves, not by the government, and unlike Indigenous organizations in KMAD and YNAD, they interacted with international Indigenous groups. However, despite their attempts to promote negotiations through roundtables discussions with the government and the industry, they failed. The roundtable discussions meant to meet in a friendly atmosphere to talk without immediately binding implications, potentially establishing good conditions for more formal dialogue (Stammler & Forbes, 2006, p. 56). Therefore, the Russian experience in Western Siberia showed that effective regional legislation and strong regional governance (top-down method) could work better for regional development than local initiatives (bottom-up approach).

3.5. Summary

This overview of oil and gas policy in Canada, the United States, and Russia showed that although petroleum policy is a high priority in all these countries, only Russia is strongly interested particularly in the Arctic oil and gas development. Canada and the United States prefer to develop tar sands and shale oil as alternatives to crude oil extraction.

The oil and gas development in Canada, the United States and Russia changed the life of local and Indigenous peoples in similar ways – introducing new jobs, building infrastructure, destroying traditional lands of Indigenous peoples and providing other positive and negative effects. The so-called model of coexistence of the Indigenous economy and the wage economy

developed in all examined Arctic regions. However, the Russian case showed that petroleum development provided the best understanding between all stakeholders only when the region had a strong government authority. Only the powerful regional government could closely work with oil and gas companies and Indigenous associations. In the Canadian and American cases, the regional government did not manage the dialogue between stakeholders; it was rather controlled by the federal government (Alaska), or initiated by the oil and gas companies (NWT). When Russian Indigenous associations suggested the idea of roundtables, it was supported neither by the government nor by companies. Thus, the bottom-up approach did not work effectively in Russia.

Canada and the United States assign the taxation of oil and gas revenues to subnational governments. Analysis of the provincial and state budgets of oil-rich Alberta and Alaska showed that most of their revenues come from petroleum extraction. Unlike Canada and the U.S., almost all of the oil and gas revenues in Russia go directly to the federal government. The local government of the oil-rich Khanty-Mansi Autonomous District experienced a lack of regional benefits from oil extraction, except corporate income tax from oil companies. Further study of federal revenues of the Russian Federation showed that the Russian government is highly dependent on oil and gas revenues.

The analysis of the oil and gas industries in each country indicated that neither Canada nor the United States has national oil companies in the petroleum business. In contrast, national oil companies occupy most of the Russian oil and gas industry. The brief overview of NOCs showed the unlikelihood of this type of company to be financially successful, unless they are independent of the government. On the other hand, depending on the circumstances, the NOCs could potentially be close with the government, and national policy. The NOCs could even play a role

as investors in social programs. These features put the NOCs under risk of being over controlled by the policy of their governments.

Unfortunately, this overview of national oil companies does not respond to the question of whether the NOCs are better in negotiations with Indigenous peoples than other companies or not; or whether they rather create barriers to their participation in decision-making. However, at the same time, it is clear that in many cases, the NOCs determine their national oil policy, and they are managed directly by the governments of their countries. Therefore, the actions of the NOCs could be considered indicators of the willingness of the government to negotiate with Indigenous peoples in particular policy areas.

Chapter 4. The Legal Protection of Indigenous Peoples: The Role of Subgovernments and Indigenous (Tribal) Organizations

The first part of this chapter examines the legal status of the Indigenous (tribal) communities of Canada, the United States and Russia, focusing on their participation in oil and gas development. In this chapter I ask could Indigenous communities be equal partners in negotiations with the governments and petroleum corporations? The equality of Indigenous peoples with other stakeholders is important in order to guarantee that their needs and wants will be heard, and then reflected in land claims agreements or/and national legislation.

Indigenous leadership is strongly tied to the concept of Indigenous self-governance. Behrendt (2003), an Australian lawyer, emphasizes "Indigenous sovereignty" and "Indigenous self-determination" as two important principles of social justice for Indigenous communities all over the world (p. 87). The Royal Commission on Aboriginal Peoples of Canada (cited in Macklem et al., 1995) points out that:

> Before European contact, First Nations were self-governing societies. While Crown practice in negotiating treaties with First Nations suggests Crown recognition and acceptance of Aboriginal self-government, Aboriginal authority to continue to be self-governing was ultimately denied by the assertion of sovereignty by settling nations and the establishment of nation-states on the continent. Thus, First Nations were treated in formally unequal terms by European international law and practice. The reasons offered in defense of such formal inequality were not normatively justifiable reasons, in that they were based on unacceptable notions of Aboriginal inferiority. Formal equality supports the recognition of a right of Aboriginal self-government, in that it would seek to place Aboriginal people in the position they would have been in had they been treated as

> formally equal to European nations at the time of contact. Formal equality underlies normative arguments in favor of a right of self-government based on the fact of prior sovereignty of Aboriginal people (Macklem et al., 1995, p. 39).

In addition, the Reid survey (1990) reported that:

> Canadians do recognize aboriginal Canadians' need for some control over their own destiny and express support for a significant degree of native self-government. At the same time, most Canadians feel that along with self-government comes self-responsibility and self-reliance (cited in Hylton, 1994, p. 226).

Although in Canada, the United States and Russia the idea of Indigenous leadership is implemented similarly, in the form of tribal organizations, the legal roots of Aboriginal self-governance are distinct in each of these countries. The Indigenous right of self-governance has been recognized differently: in Canada mostly through treaty negotiations between Aboriginal peoples and the government, in Alaska through the adoption of ANCSA, and in Russia through the implementation of federal legislation.

The second part of the chapter compares the legal status of Indigenous peoples on the local (subnational) level, mainly focusing on their capacity to participate in oil and gas development as equal partners with the governments and oil and gas corporations. The focus is on particular Arctic resource-rich regions of Canada, the United States and Russia with ongoing or proposed petroleum extraction. This analysis is necessary because while the previous comparison of federalism and Indigenous legislation explained things generally, the following analysis is more narrowed and tied with the different historical backgrounds of particular Indigenous peoples and industrial projects. In other words, this chapter narrows the focus from

the federal perspective to the regional and provides case studies to more fully explain some specific things that can be hard to be seen from an overview.

Each case study includes the industrial project, the Indigenous population(s), and legal regulations established by the government. The Canadian case includes the Mackenzie Delta with the proposed Mackenzie Gas Project and the agreements with local Indigenous communities. The case with the United States analyzes the development of Prudhoe Bay in Alaska and creation of the North Slope Borough by municipal regulations. Due to the distinction in the status of Russian regions (republics are more autonomous than other regions), the Russian case includes two autonomous districts and one ethnic republic -- Nenets Autonomous District, Khanty-Mansi Autonomous District and Sakha Republic. I do this in order to provide clearer contrast between the Russian model of Indigenous protection in relation to oil and gas and those in North America.

4.1. The Legal Status of Indigenous Communities in Canada, the United States, and Russia

4.1.1. Land Claims Agreements with the Inuit in Canada

Unlike in Alaska, as we will see below, the right of Aboriginal peoples to self-government in Canada was recognized through treaties between Aboriginal peoples and the Canadian federal government. Scott (1993) argues that there was a shift in comprehensive land claims policy between 1973 and 1978, using treaties as a tool to promote Aboriginal self-governance (p. 313). The land claims agreements signed during this time also meant the beginning of the period of decolonization for four Canadian Arctic regions: the Western Arctic, Nunavut, Nunavik, and Northern Labrador. The treaties can also be considered as political and legal mechanisms that provided self-governance for Aboriginal communities tied to their lands (Macklem et al., 1995, p. 61). Aboriginal peoples, including the Inuit, established their own

organizations for the purpose of negotiating their land claims. For instance, the Labrador Inuit Association, which was formed in 1973 in order to advance the Labrador Inuit land claims, went on a long journey to form the Nunatsiavut Transitional Government in 2005 (Nunatsiavut Government, 2015). The creation of Nunavut was discussed by regional Inuit organizations in Northwest Territories for more than twenty years, and included not only land issues, but also political aspirations on self-government (Macklem et al., 1995, p. 98).

In 1973, the Canadian government established the process of comprehensive land claims to define Aboriginal rights and transform them into specific treaty rights. Due to the lack of understanding of legal proceedings, the federal government also issued a formal process "In All Fairness," which was subsequently revised several times. The actors in these comprehensive land claims negotiations are the Aboriginal groups, the federal government, and provincial or territorial government. In order to claim lands, the Aboriginal group must submit a statement of intent to both federal and subnational governments to prove the following facts: 1) their rights on claimed lands have never been extinguished; 2) the lands were historically occupied and used by this group; 3) and it is possible to identify and recognize this particular Aboriginal group (Alcantara, 2013, p. 15). Governments can respond in different ways – refuse to accept the statement because it does not satisfy the requirements of government policy, or they can recognize the land claim and initiate the process of negotiations. It should be noted that both levels of the government must recognize the claim. A refusal means that the Aboriginal group must prepare a new claim and organize it with governments. This process significantly slows the signing of land claims agreements. For instance, the Labrador Innu group spent fourteen years preparing a claim that met the requirements of both governments. The process of negotiations can be relatively quick or very long, depending on the type of agreement. In comparison, another

Aboriginal group of Labrador, the Labrador Inuit, signed a framework agreement for fourteen months, and an agreement–in-principle in eleven years (Alcantara, 2013, p. 31).

Until 1987, the federal government of Canada considered that regional self-government arrangements must receive constitutional protection and a specific constitutional provision in order to recognize the right of Aboriginals to self-government. In 1987, the federal government allowed including a broader range of self-government into claims negotiations; however, the negotiations for self-government must take place through a process separate from the land claims process (Macklem et al., 1995, p. 95-96).

The Charlottetown Accord, proposed constitutional amendments affecting Aboriginal peoples. The Accord was signed in August 28, 1992 by the federal, provincial, and territorial governments, and also by the representatives from Aboriginal groups. The Charlottetown Accord recognized the inherent right of Aboriginal peoples to have self-government alongside the federal and provincial governments, within Canada. The self-government agreements would have the force of law (Isaac, 2004, p. 95, p. 365). It also guaranteed representation of Aboriginal peoples and their new self-governing organizations in a new elected Senate, and it included other provisions related to extensions of rights of Aboriginal peoples. However, the Accord was rejected in a national referendum held on October 22, 1992, for several reasons. Some non-Quebecers thought the Accord provided too many concessions to the Province of Quebec, while some Quebecers felt there were not enough powers provided to Quebec. Many people complained that there was not enough time given to them to comprehend the draft of the accord. Some people were concerned that the self-government provisions in the Accord would negatively affect the individual rights of Aboriginal women. Other people felt that the Accord considered them equal sovereign nations. But the general reason the Accord failed was because

of the lack of consultations with the Aboriginal people (Elliott, 2000, p. 172-173). Nevertheless, the constitutional negotiations on the Charlottetown Accord were "defining moment in Canadian history. The recognition by the government that the self-government rights of aboriginal peoples are 'inherent' reflects an understanding that these rights are 'pre-existing', meaning they are the rights pre-existing the creation of Canada," declared Mary Simon (Simon, cited in Shadian, 2014, p. 70).

In 1995, the Government of Canada issued Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government, which recognized the inherent right of self-government as an existing Aboriginal right under Section 35 of the Constitution Act, 1982. The government ruled that negotiations between the government and Aboriginal peoples are a preferable way of implementing this right. The agreements reached through negotiations can be formally adopted through treaties, legislation, contracts, and non-binding memoranda of understanding. The self-government right can be also fixed by a new treaty, as a part of land claims agreements, or as an additional part of existing treaties (Government of Canada, 2015b). In 1996 the Royal Commission on Aboriginal Peoples released the Report of the Royal Commission on Aboriginal Peoples, which included policy recommendations regarding Aboriginal peoples. An inherent right of sovereign Aboriginal self-government was also included in this Report (Elliott, 2000, p. 172-174).

In accordance with INAC's (1998) Federal Policy for the Settlement of Native Claims, the primary interest of the federal government in negotiations was to provide certainty and finality in order to stimulate economic development (cited by Alcantara, 2013, p. 21). The provincial goals were similar to the governmental ones – to achieve certain and final settlement of Aboriginal claims (Executive Council, 1997, cited by Alcantara, 2013, p. 23). For the

province, certainty was understood as a step towards a more stable environment for development and investment. Aboriginal groups usually have broader interests. Mainly, they want to obtain as much control over their lands as possible. The control is important for Aboriginal groups, as they need to protect their traditional practices, gain benefits from economic development such as jobs and revenue, and self-govern social programs such as health, education, environmental protection, and traditional subsistence activities (Alcantara, 2013, p. 24). Each Aboriginal group has its own goals in negotiations. For instance, the Innu were most interested in protecting their sovereignty as it is tied to the claimed land, whereas the Inuit people of Nunavut preferred to express their desire to form self-government within the federation (Alcantara, 2013, p. 24-25).

During the comprehensive land claims process, Aboriginal groups in Canada are permitted to declare their commitment to negotiate for self-government. The self-government issue could be discussed at the same time as comprehensive claim negotiations. Self-government negotiations are authorized by a separate policy, but they can receive constitutional protection only if there is a general constitutional amendment to that effect (Elliott, 2000, p. 334). Self-governance is a conception that is broader than the Aboriginal title, which relates to occupation and use of land. Governmental authorities could potentially interfere in all aspects of life. In the strongest form, self-government could include full sovereignty or independence from the country. Regarding Aboriginal land and resources, self-government implies control over the decisions made regarding specific land. Every case with self-government is related to land and resources (Elliott, 2000, p. 123).

In 2005, the Labrador Inuit Association, the Government of Canada, and the Government of Newfoundland and Labrador signed the Labrador Inuit Final Agreement in Nain, Labrador. The Labrador Inuit Final Agreement differs from others by the inclusion of a self-government

chapter. Most other agreements have only terms, which refer to the negotiation of separate agreements (Alcantara, 2013, p. 51). This agreement established the regional self-governance of the Nunatsiavut Government. The Inuit people possessed 15,799 square kilometers of land in northern Labrador (Labrador Inuit Lands), and the Labrador Settlement Area covered 72,500 square kilometers of land. The Nunatsiavut Government obtained the right to administer, control and manage Labrador Inuit Lands. The lands can be alienated only by the Nunatsiavut Government, and only to Canada or the Province; or in accordance with an Inuit Law (Shadian, 2014, p. 77; Land Claims Agreement Between the Inuit of Labrador and Her Majesty the Queen in Right of Newfoundland and Labrador and Her Majesty the Queen in Right of Canada, 2005).

According to the Agreement, Inuit are excluded from the ownership of subsurface resources, but they own an undivided 25 percent interest, with the Province, in all subsurface resources from the Labrador Inuit Lands. The Nunatsiavut government and the province may agree to exempt Labrador Inuit Lands from the acquisition of ownership of mineral rights on these lands. The standards for exploration of subsurface resources need to be negotiated between the Nunatsiavut Government and the provincial government. The holder of the subsurface interest in Labrador Inuit Land must enter into an Inuit Impact and Benefits Agreement with the Nunatsiavut Government; otherwise, the holder may not develop subsurface resources in this area. The province shall notify the Nunatsiavut Government about any subsurface interest in Labrador Inuit Land. An Inuit Impact and Benefits Agreement might be based on particular principles, including the following: 1) the benefits shall be consistent with and promote cultural goals of the Inuit people; 2) the developer must avoid, mitigate or compensate any negative impacts on the environment, Inuit, and Inuit rights (Land Claims Agreement Between the Inuit of Labrador and Her Majesty the Queen in Right of Newfoundland and Labrador and Her Majesty

the Queen in Right of Canada, 2005). In addition, the Inuit are to receive 5 percent of provincial revenues derived from the subsurface resources from the Voisey's Bay Area. Voisey's Bay is a distinct area from the Labrador Inuit Lands (Alcantara, 2013, p. 50).

Overall, the Nunatsiavut government of Labrador Inuit represents an example of implementation of Aboriginal inherent right of self-government in Canada through the land claims process. This agreement is important for the analysis of Canadian tribal governance because it combines both political and land aspirations of the Inuit. It should be noted that the Aboriginal peoples were able to choose a mode of self-governance that suited them. In the case of the Labrador Inuit, the members of the Labrador Inuit Association considered many different types of self-governments, such as a regional government, based on municipal units; a government based on federal enclaves; a system of separate institutions; and a territorial form of government. They also considered ethnic and non-ethnic forms of government. Also, the recognition of Inuit customary law on their lands may become part of their Constitution, in accordance with their agreement. Therefore, negotiations with the government as a form of implementation of the right of self-government give many opportunities for Indigenous peoples to choose which type of the self-government fits them best.

4.1.1.1. Case Study: Northwest Territories and the Mackenzie Gas Project

The Canadian Arctic petroleum deposits are believed to constitute approximately 35 percent of country's remaining natural gas and 37 percent of remaining recoverable crude oil. The offshore and onshore coast petroleum deposits of the Northwest Territories (NWT) are particularly interesting for extraction, both commercially and politically (Østhagen, 2013, March 12). The Beaufort-Mackenzie Basin has large volumes of petroleum resources; discovered reserves are estimated at 2.8 billion barrels with up to 10 billion barrels of undiscovered

recoverable resources. Although the majority of exploration drilling activity occurred in the 1970s and the 1980s, most of the petroleum deposits has not yet been not extracted. The Norman Wells oil field was discovered in 1919 and is the single crude oil reserve of the Imperial Oil Company. Despite the existence of large petroleum reserves, there is no significant oil and gas development (Mason, Anderson & Dana, 2008, p. 174-175). The reason is the lack of a pipeline to transport the petroleum to the market (Mason, Anderson & Dana, 2008, p. 174-175).

The construction of the Mackenzie Valley Pipeline (the Mackenzie Gas Pipeline Project), which was supposed by built in the 1970s, could solve this problem. In 1974 several multinational oil companies (Arctic Gas) proposed to the Government of Canada to build the pipeline. However, the project is still delayed. The Mackenzie Valley Pipeline Inquiry (well-known as the Berger Inquiry) received much attention, and ultimately led to the moratorium on the Mackenzie Gas Project (Mason, Anderson & Dana, 2008, p. 173). Some authors consider the Berger's Inquiry as the most important commission in the history of Canada (O'Neil, 1997, p. 208).

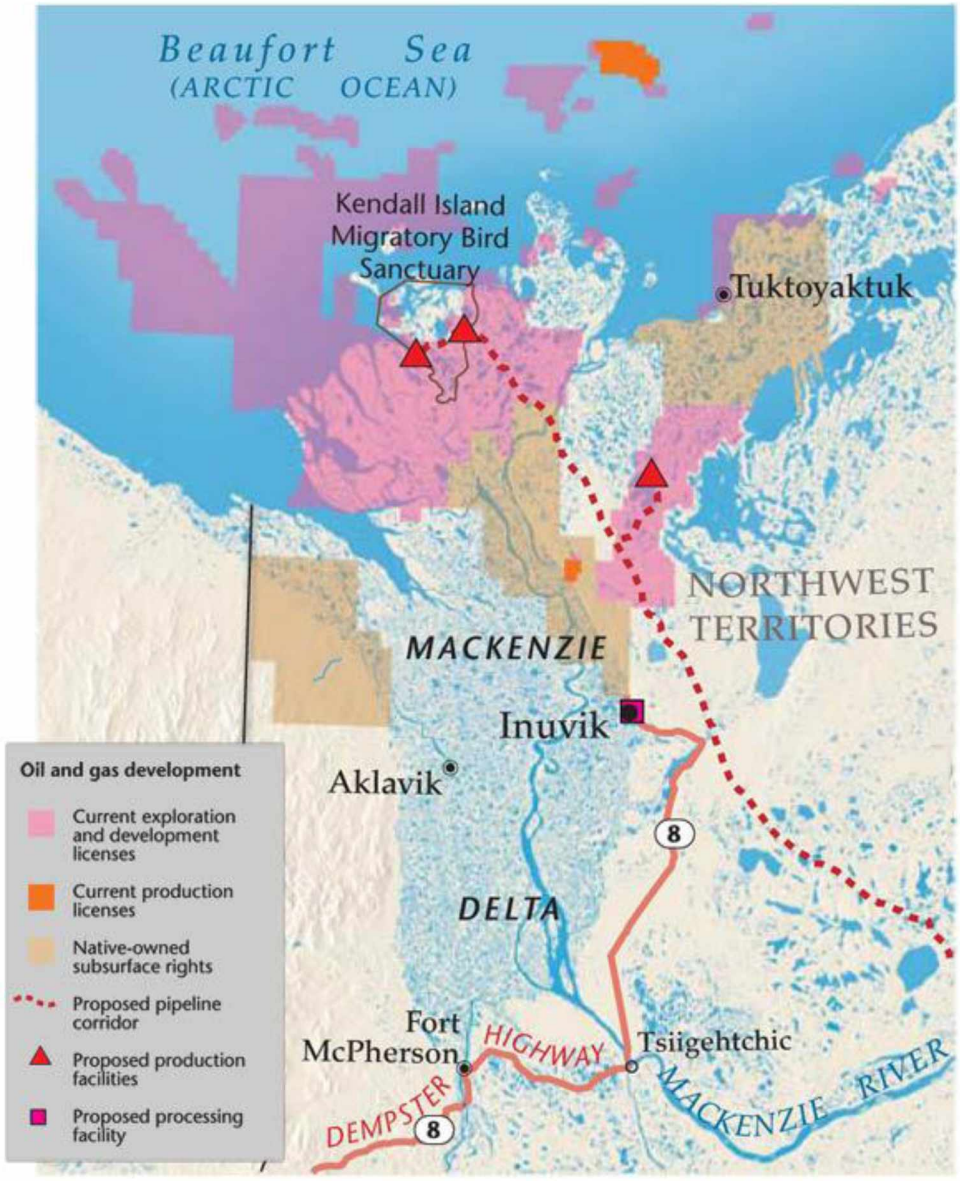

Figure 4.1. Oil and Gas Development in Mackenzie Delta, NWT, Canada (Canadian Geographic, 2007).

In March 1974, the Department of Indian Affairs and Northern Development (DIAND) called for a commission to investigate the possible socioeconomic consequences of the development of the Mackenzie pipeline. Justice Thomas Berger spent a few years analyzing the social, environmental, and economic impacts of the future project. He also aimed to design terms and conditions that could be "appropriate to the construction, operation, and abandonment of a pipeline in the Yukon, and Northwest Territories." Berger provided a few public hearings during the period from 1974 to 1977, where all 35 communities and major cities were involved (Shadian, 2014, p. 93). The main argument made by Justice Thomas Berger in his synopsis was that the construction of the Mackenzie pipeline should be delayed for at least ten years. Berger explained his position through the establishment of the appropriate terms and conditions that were summarized in the social and economic recommendations.

Berger (1977b) argues that because of a variety of social problems among Aboriginal communities such as alcoholism, disease, crime and violence, the first step that should be taken before the construction is the strengthening of the traditional Native economy. It could be the development of economic activities related to traditional lifestyles such as logging and saw milling, or fur, fish and game and tourism (p. 2). Social welfare could also be enhanced through the establishment of centers that could help Natives who migrated from villages to towns to adapt to new urban circumstances, including help with housing and provisions and an increase in the number of social welfare officers (Berger, 1977b, p. 7).

The socioeconomic impact of the future project on the territorial economy was potentially, according to Berger, controversial. The Mackenzie pipeline concept is very attractive for business, but it could be overinvested, so the support of goods and services related to pipeline

activities could exceed demand. The development of the pipeline could provide a lot of opportunities in service jobs, but the potential for employment among the Native population could be limited, as many of them are not inclined towards the potential jobs in the industry. Berger argues that the Native corporations and companies need to be involved in business activities. Moreover, they should be encouraged to develop a renewable resources economy. Renewable resource development could help Native people find permanent jobs and, therefore, benefit Indigenous livelihoods. It would the best solution for the economy as a whole (Berger, 1977b, p. 8-10).

In regard to economic recommendations, a Wilderness Park in the area is highly recommended. In addition, white whale and bird sanctuaries should be built in order to protect the wilderness of the area, especially the life stages of migratory birds. In the case that the pipeline is constructed along the Delta, the possible solution is to mitigate or avoid environmental impacts (Berger, 1977b, p. 11-12).

Overall, Justice Berger concluded that the Mackenzie Valley Pipeline should be postponed for ten years, and the mitigation of environmental and social impacts should be the priority of the government and the companies. The Berger Inquiry helped federal and local governments to realize how to start thinking about mitigation of possible negative consequences of the energy projects in the Canadian Arctic (Berger, 1977b, p. 1).

The reaction of the industry to the Berger report was mostly negative. Companies argued that the problems mentioned in the report are too broad to find a solution, and they have already been addressed before. However, there was also a point of view that if the pipeline was built, it would have led to the bankruptcy. The reaction of Native people was also mixed. Most of the

Aboriginal people supported the delay, as they wanted to settle their land claims before the construction, although some were disappointed by the moratorium (O'Neil, 1997, p. 215-216)

The ten-year moratorium ended in 1987. In addition to environmental concerns, the Canadian Government had recognized that no pipeline could be constructed before all Aboriginal land claims were settled. The Inuvialuit signed their final agreement in 1984, the Gwich'in in 1992, and the Sahtu Dene and Metis in 1994. The Den Cho are still in the process of negotiations for a final agreement.

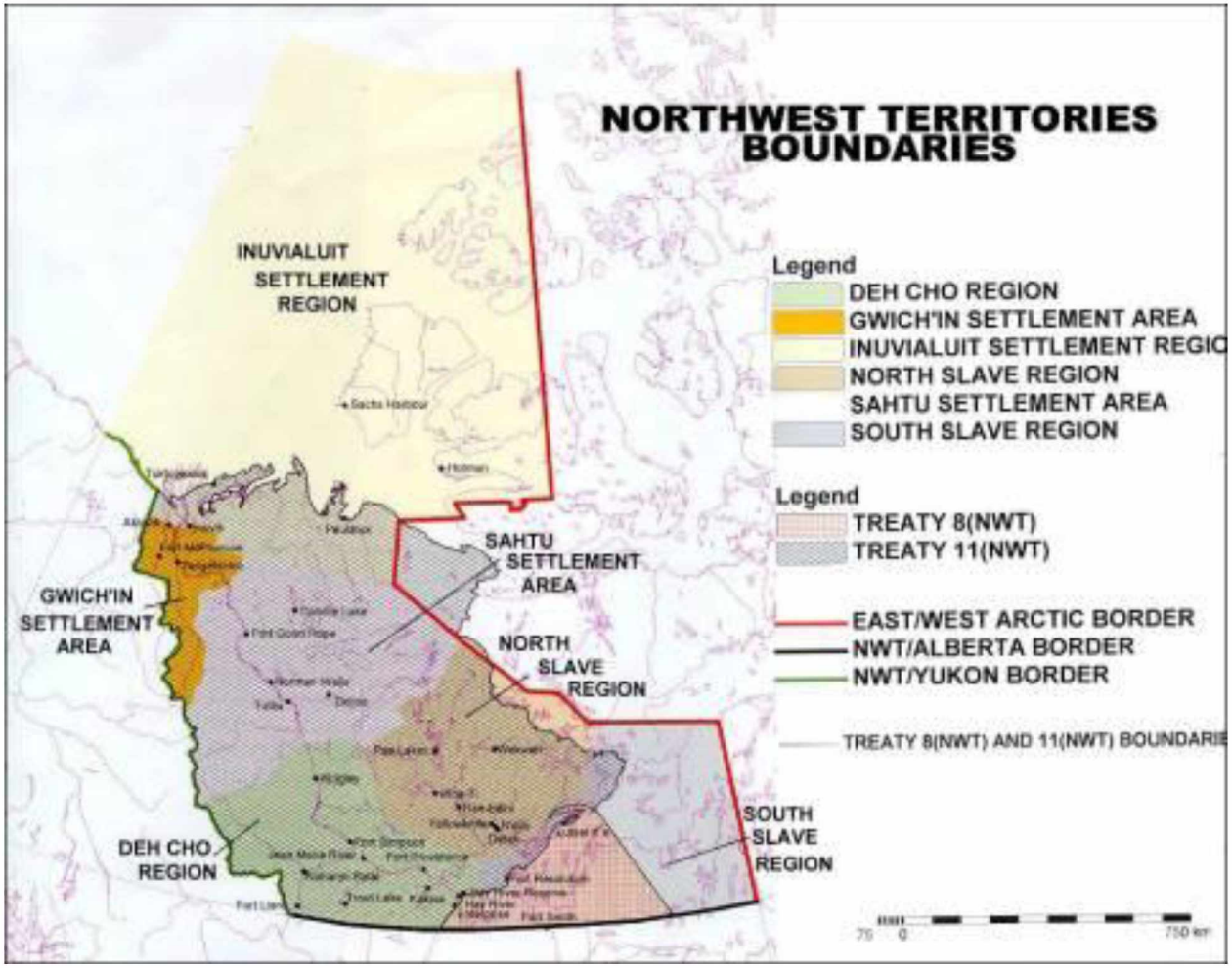

Figure 4.2. Aboriginal Settlement Areas in Northwest Territories, Canada (Government of Canada, Department of Justice, no date).

The Inuvialuit were the first Aboriginal people in NWT who negotiated land claims with the Government of Canada (Nuttall, 2000, p. 384). In response to intensive mineral and petroleum exploration in the Mackenzie Delta/Beaufort Sea area (COPE early policy statement, cited in Zellen, 2008, p. 142), Inuvialuit and other Inuit people from the eastern and central Arctic organized the Committee of Original People's Entitlement (COPE) in 1970. Originally, all Inuit people initiated this process (at this time Nunavut was a part of NWT), but then, eastern and central Inuit people refused to continue the process, as they wanted to combine political questions with the land claims. Despite the refusal of others, the Inuvialuit decided to continue this process, as oil and gas development was potentially coming to their lands, the Mackenzie Delta, and they were quite concerned about their cultural survival. COPE's proposal, *Inuvialuit Nunangat,* was presented in 1976, and then COPE signed the Agreement-in-Principle with the Government of Canada in 1978 (Zellen, 2008, p. 140-142).

In the beginning, COPE attempted to follow the same pattern as the Alaska Native Claims Settlement Act. However, failure to protect subsistence rights caused some concerns among the Inuvialuit. In addition, the Inuvialuit were not satisfied by the amount of self-government given to Alaska Natives. So, unlike ANCSA, the Inuvialuit were more likely to support self-government and subsistence rather than the corporate model and economic integration of Native people. The Canadian government agreed to protection of subsistence, but separated the self-government issue into a different claim. As a result, the process of the land claims agreement was comparatively fast, whereas, the decision-making process about the self-governance of the Inuvialuit still continues. While the Inuvialuit are still waiting for this decision, the central and eastern Inuit have already settled their land and political claims, organizing Nunavut in 1999 (Zellen, 2008, p. 142-143).

The Inuvialuit Final Agreement (IFA) was signed in 1984. The Inuvialuit received fee-simple title to 35,000 square miles of land, 30,000 with surface rights, and 5,000 with surface and subsurface rights. Also, the Government of Canada granted the Inuvialuit $45 million CAD as compensation for lands surrendered to the Crown, and $7.5 million CAD in order to design language and cultural programs (Zellen, 2008, p. 143).

The Inuvialuit Final Agreement set up two organizations – the Inuvialuit Game Council (IGC) and the Inuvialuit Regional Corporation (IRC). The IRC was responsible for managing and administering the lands and financial compensation, and also for controlling several corporations, such as the Inuvialuit Land Corporation, the Inuvialuit Development Corporation, and the Inuvialuit Investment Corporation. At the same time, six community corporations without shared capital were established in order to control the IRC through the democratic process. Nevertheless, despite these attempts to create a balance between powers, the IRC has evolved into a dominant corporation. Zellen (2008, p. 144) compares this power dynamic with similar tendencies in Alaska, where the regional corporations dominate over the village corporations in financial decisions (Zellen, 2008, p. 143-144).

It should be noted that the IFA protects both subsistence and ownership rights over the lands; the traditional lands can never be sold or transferred to non-Inuvialuit. The Inuvialuit Game Council (IGC) and six Hunters and Trappers Committees (HTCs) control the administration of wildlife and environmental issues. The IGS supervise five joint management boards that represent both the governmental and the Inuvialuit members. These boards were established in order to advise the central government in regard to subsistence, conservation, and environmental protection issues. This partnership between the Government of Canada and the Inuvialuit could be called co-management. Although the Government of Canada has final

decision authority, this co-management model gives the Inuvialuit a right to participate in discussion about environmental issues, such as oil spill response in the Beaufort Sea (Zellen, 2008, p. 145). The response of the oil industry to the IFA was mixed – some companies complained about granting too much authority, as they thought, to the Inuvialuit, but others felt that the IFA created a good partnership between the Aboriginal peoples and the corporations.

The Dene/Metis land claims process took a long time - seventeen years of negotiations. Although the process of land claims started before the Gwich'in negotiations, the final treaty of the Sahtu Dene and Metis Land Claim Agreement Act between the Canadian government and the Dene Nation was signed only in 1994 (Mason, Anderson & Dana, p. 180). The reason for the delay was the so-called extinguishment or the cede and surrender clause, which is mostly disliked by the Native communities. This requirement of ceding and surrendering Aboriginal title is usually associated with historical Crown policy of Aboriginal acculturation into the agricultural economy for the reason of opening up Aboriginal lands for colonial settlers (Zellen, 2008, p. 179) .

The extinguishment clause brought nothing new into the treaty-making process; the Inuvialuit Final Agreement had a similar concept; however, the Dene Nation were quite resistant against the "cede and surrender" clause. When the Dene and the Canadian government met in the summer of 1990 in order to ratify the claim, the Dene leaders voted against the claim (Zellen, 2008, p. 185).

Despite the same controversies over the extinguishment clause that appeared in the Inuvialuit and the Gwich'in communities, both of them signed treaties before the Dene/Metis. However, before signing their land claims agreement, Gwich'in delegates visited the Dene-/Metis national assembly. The clause, "In consideration of the rights and benefits provided to the

Gwich'in by this agreement, the Gwich'in cede, release and surrender to Her Majesty in Right of Canada all their Aboriginal claims, rights, titles, and interest, if any in and to lands and waters anywhere within Canada" was refused by the Dene/Metis Assembly, but accepted by the Gwich'in delegation. The Gwich'in final agreement is more similar to the Inuvialuit Final Agreement than to the Dene/Metis; it has a similar structure and similar goals. Subsequently, Robert Alexie, chief negotiator for the Gwich'in Tribal Council at the Gwich'in Assembly in 1991 said that the definition of Aboriginal rights in modern-day treaties was very unclear; he asked the opinion of the Dene/Metis delegates, and they responded "everything that you could imagine." As a result, Gwich'in listed all possible rights in their agreements: the right to negotiate self-government; the right to financial compensation; the right to receive fee-simple land; the right to regulate water and land; the right to participate in the conservation of heritage resources; special harvesting rights and others. In addition, Gwich'in added the following clause: "nothing in this agreement shall affect the ability of Gwich'in people to participate in or benefit from any existing of future constitutional rights for Aboriginal people which may be applicable to them." Alexie called this clause a kind of "insurance" that any later recognized rights would not be lost forever. The goal of the Government of Canada in these negotiations was to make the Aboriginal peoples the largest private owners of Canada, instead of creating independent mini-states. In other words, the sovereignty of Aboriginal peoples in Mackenzie Delta agreements was mostly formal,and was strongly tied to their lands (Zellen, 2008, p. 185-187).

The Inuvialuit, Dene/Metis, and Gwich'in peoples' settlements of land claims prepared them for the second "birth" of the Mackenzie Gas Project in the 2000s (Zellen, 2008, p. 228). The second coming of the Mackenzie Gas Project was when the Government of the Northwest Territories and TransCanada Pipeline signed a Memorandum of Understanding in July 1999. The

main goal of this agreement was to support the development of oil and gas deposits in the NWT and the construction of new pipelines for natural gas transmission. Subsequently, four large Canadian companies – Imperial Oil Resources Ltd., Shell Canada Ltd., Gulf Canada Resources Ltd., and Mobil Oil Canada discussed the possibility of a convenient route that could transport Mackenzie Delta gas to southern markets. At the same time, the group of 30 Aboriginal leaders, including the Inuvialuit, the Sahtu, the Den Cho and the Gwich'in, had meetings in Fort Laird and Fort Simpson, and then decided to form the Aboriginal Pipeline Group (Mason, Anderson & Dana, 2008, p. 181).

After five years, Imperial Oil Resources Ventures Limited applied to the National Energy Board of Canada for licensing of the Mackenzie Valley pipeline project, part of the Mackenzie Gas Project. The Aboriginal Pipeline Group (APG) obtained an ownership of 30 percent of the Mackenzie Valley Pipeline for future benefits. In addition, this share of the future project gave the APG membership on the board of directors of the Mackenzie Gas Project and, therefore, input into decisions for the future (Mason, Anderson & Dana, 2008, p. 181). Subsequently, the APG and the companies signed an agreement on June 19, 2004.

According to this agreement, if the pipeline carries 800 million cubic feet of gas per day, and no new resources are discovered, the APG will receive $1.8 million CAD dividends per year over 20 years. In more optimistic scenarios, if there are significant resources of gas, and the pipeline carries 1.5 billion cubic feet per day, the APG's dividends will be $21.2 million CAD annually over 20 years. The question of a full partnership of the APG was complicated because of the inability of the group to finance their share of the project. After TransCanada Pipelines Ltd.'s submission of an $80 million CAD loan, the problem was solved (Mason, Anderson & Dana, 2008, p. 182).

However, the development of the Mackenzie Gas Project was delayed because of the continuing negotiations with the Den Cho. The Den Cho claim about 40 percent of the projected pipeline route land. The federal government and Den Cho representatives signed a Five-year Resource Development Agreement before negotiations about a final land claims agreement. According to this treaty, the Canadian government will pay a certain percentage of the royalties from the Mackenzie deposits. The project was supposed to be ready for environmental review, however, in 2003 the Den Cho asked for representation in the decision-making process. Chief of the Liidlii Kue band in Fort Simpson, Keyna Norwegian, explained that the Den Cho were worried about the environmental impact of the future pipeline on their traditional lands. The Den Cho also asked for support from environmental groups (Mason, Anderson & Dana, 2008, p. 183). Thus, the Mackenzie Gas Project has been frozen for an undetermined term.

In the public hearings that were provided by the National Energy Board (NEB) economic, safety and the technical issues were considered. The Joint Review Panel also started parallel hearings, including the representatives of the Inuvialuit, Sahtu, and the Gwich'in (who were involved in the APG). As the APG had partial ownership of the project, the negotiations were successful. The APG put some pressure on the Den Cho, and set a deadline of December 31, 2006 for the Den Cho to decide whether or not they would join the group. In addition, the APG shared 34 percent participation with the Den Cho in future dividends (Mason, Anderson & Dana, 2008, p. 184).

However, despite the support of some Indigenous communities and the resistence of others, the Mackenzie Gas Project is still under consideration. There are many reasons why the project has not been started yet, but the lack of Aboriginal land claims settlement is the greatest. Overall, the case of the Mackenzie Gas Project shows that the participation of Indigenous

peoples in oil and gas development is an even more complicated concept than it appearsat first glance. The situation revolves around the different views of distinct Aboriginal communities about Indigenous rights, their relationships with the federal government, and their opinions about the pros and cons of the oil and gas development. It should be noted that even if Indigenous communities have similar historical backgrounds and areas of residence, they are actually distinct nations with their own principles and identities. So, each of the Indigenous communities could have different content in their land claims, and it would be hard to generalize their needs and wants in the context of the policy-making process. Despite the renewed interest of the Canadian government in Arctic petroleum in the 2000s, all Arctic drilling was halted after the Deepwater Horizon incident in the Gulf of Mexico, which led to a large oil spill. The National Energy Board designed a new set of guidelines for companies in 2011 with rigorous requirements for environmental safety (Østhagen, 2013, March 12).

4.1.2. Alaska Native Tribal Governments and ANCSA Corporations

The United States became an Arctic state with the purchase of the Alaska territory from Russia in 1867. This meant that the evolution of Indigenous to government relationships in this state were different than those in the lower 48 states which had a much longer history with British, Spanish, French, and then American governments. There are many Native governments and organizations in Alaska – traditional and Indian Reorganization Act (IRA) governments, municipal governments organized under the state law, Alaska Native Claims Settlement Corporations (ANCSA), nonprofit corporations, regional Native associations and, also fish and game advisory boards. Therefore, the Native organizations could be divided into several types, in accordance with their legal categories: 1) governments; 2) economic profit organizations; 3) nonprofit organizations; 4) multiregional and international organizations (Case & Voluck, 2002,

p. 317-318). Because the research question of this study is related to the recognition of the role of government in relationships between oil and gas corporations and Indigenous peoples, it is reasonable to focus on those types of Native organizations that directly interact with the federal and state governments in their activities, and that were organized under federal or state legislation. In Alaska's case, these are Native governments, municipal governments, and the ANCSA corporations.

There are two types of Native government in Alaska, besides ANCSA corporations: those that are established under the state law, and those that operate under the federal law. The state-formed Native governments are de-facto public, as they do not have any special Native status. Unlike these governments, federal Native governments are exclusively Native by their sovereign status or because of statutory or administrative recognition (Case & Voluck, 2002, p. 318-319). The narrative of Alaska Native tribal organizations may be divided into three periods, in accordance with their derivation timeline: prior to statehood in 1959, after the statehood until the enactment of Alaska Native Claims Settlement Act in 1971, and the ANCSA time period.

The Indigenous communities in Alaska, organized under federal legislation, are divided into two types – traditional and IRA. The federal government recognized them before Alaska's statehood. Traditional village governments are established by local Alaska Native customs and traditions, but not under any formal legislation. However, like any traditional Native government, Alaska Native traditional governments have inherent powers unless the federal government has deprived them of it. For instance, they have the rights to define conditions of tribal membership, regulate domestic relations of members, prescribe rules of inheritance, levy taxes, regulate property within the jurisdiction of the tribe, control the conduct of members by municipal legislation, and administer justice in minor matters. The federal government has

recognized traditional governments as eligible for federal services, programs, and privileges (Case & Voluck, 2002, p. 321-322). The traditional governments may engage in any activity for the purpose of implementing internal self-government, as long as it does not contradict state or federal jurisdiction. Their universal function is to manage rites and rituals of the villages, such as potlatches, so they are more likely to be oriented to represent village traditions. The traditional governments are generally not required to have constitutions and bylaws, but the federal government encourages them to draft these acts in order to ensure that these governments truly represent Native people in the community (Morehouse, McBeath & Leask, 1984, p. 182-183; Case & Voluck, 2002, p. 321-322).

The Indian Reorganization Act of 1934 authorized seventy-five Alaska Native governments. The IRA was intended to strengthen Native tribes and support and enhance the Native American capacity to organize self-governance. In accordance with federal law, the status of an IRA organization is equal to a tribe, and it is governed by its constitution.

According to the IRA, Alaska Natives were required to adopt constitutions and bylaws if they wanted to organize their communities under the provisions of this Act. The IRA organizations function in a similar way as traditional governments - they interpret and protect the membership of the tribe, and they may regulate the behavior of tribal members. However, under the federal jurisdiction they also have a right to set up tribal courts, and to organize federally chartered businesses or cooperative associations. In larger villages, they can manage social services. Although federal programs constitute the main source of their funding, the IRA governments may tax their members in order to raise funds for tribal programs (Morehouse, McBeath & Leask, 1984, p. 177-178; Case & Voluck, 2002, p. 322-324). Therefore, neither traditional nor IRA organizations have jurisdiction over the lands and mineral resources; they are

just responsible for the local governance over their tribal members. Thus, they are more similar to the Russian tribal organizations (*obshchinas*), explained below in this chapter.

In 1959, Alaska became a state and adopted a Constitution. Statehood allowed organizing local governments under the state law. Title 29 of the Alaska Statutes organized the municipal incorporation of 106 Native communities. The incorporation under the state law gave to Alaska Native communities a broad capacity for regulation; however, according to the Alaska Indian Policy Review Commission, the legal status of municipal governments did not guarantee that these governments will always ethnically remain Native, as constitutional equal protection principle requires equal representation of all residents in state-organized local governments (Case & Voluck, 2002, p. 318-319). The North Slope Borough (NSB) was organized as a borough government under the state law. Because the NSB is located around the Prudhoe Bay area, oil extraction played a significant role in its development. The NSB does not have jurisdiction over the subsurface resources, but it can levy taxes on oil revenues (Morehouse, McBeath & Leask, 1984, p. 139, p. 159). A detailed case study of the NSB is provided below. Municipal governments organized in rural Alaska with dominant Native populations could be considered tribal in fact. Although the IRA governments have some priority for federal funding, when it comes to community planning and service delivery responsibilities, the IRA governments lose to municipal governments. Some observers note that joint government with both tribal and municipal powers could work most effectively for Alaska Native village governance (Case & Voluck, 2002, p. 324). Perhaps, the Canadian Aboriginal governments organized under the comprehensive land claims agreements, such as the Nunatsiavut Government, could serve as a best example, because they combine both tribal and municipal powers, and also have the rights to surface and in some cases, subsurface resources.

The ANCSA corporations were organized under the federal law in 1971, after the creation of IRA organizations. The purpose of their creation was to ensure the settlement of all Native land claims; the settlement resulted in corporate landholding, with Alaska Natives as shareholders. Morehouse, McBeath & Leask (1984) define the ANCSA regional and village organizations as "quasi-governments", because they are actually economic agencies that act as political organizations. They are not fully governmental, because they lack state or federal recognition for this purpose, and also cannot legislate independently (p. 183). As private corporations, they lack the rights of political governance. Although the ANCSA corporations own the lands, they are not sovereign on them (Hirschfield, 1992, p. 1348). In other words, ANCSA separates land ownership from governance (Hirschfield, 1992, p. 1347). In comparison, the Aboriginal governments in Canada, created under the provisions of modern-day treaties, have both landholding and sovereign rights over their lands and tribal members, which allows them to operate on both regional and community levels.

As mentioned above, the origin of the ANCSA corporations is in the Alaska Native land claims settlement. The legal recognition of Indigenous lands was a long process, spanning about 100 years. With the recognition of statehood in 1959, Alaska, as a state government, obtained the right to choose its lands, about 104 million acres from the federal government. At the same time, in the 1960s, when the selection process started, Alaska Native communities began to claim their traditional lands. As a response, the Secretary of the Interior stopped all transfers until the settlement of the Native land claims (Case & Voluck, 2002, p. 155; Bankes, 1983, p. 165).

The adoption of the Act took a long time; this delay was mainly related to the uncertainty about the legal status of the Alaska Natives, their right to Aboriginal title. On the one hand, the Treaty of Cession between Russia and the U.S. provided: "The uncivilized tribes will be subject

to such laws and regulations as the United States may, from time to time, adopt in regard to the aboriginal tribes of that country." Thus, in accordance with this provision, Alaska Natives have had the same status as Native Americans. However, on the other hand, the Treaty declared Alaska "to be free and unencumbered by any reservations, privileges, franchises, grants or possessions, by any associated companies, whether corporate or incorporate, Russian or any other, or by any parties, except merely private individual property holders." This legal provision, which de-facto recognized Alaska as a *terra nullius*, led to many discussions and political opposition among state and territorial leaders to the idea of aboriginal title for Alaska Natives (Case & Voluck, 2002, p. 155). The discovery of oil in Prudhoe Bay in 1968, and prospects of oil wealth strengthened their resistance. For instance, Willie Hensley, an Alaska Native leader, tells about Walter Hickel, the Governor of Alaska at the time of the ANCSA claiming that "he was attempted to crush our claims, since he hoped to use the oil resources to balance the partly state checkbook" (Hensley, 2010, p. 164).

Subsequently, after several political battles and the pressure from Alaska Native leaders, , Congress passed the Alaska Native Claims Settlement Act (ANCSA) in 1971. This Act gave Native groups 44 million acres of land, and they received a payment of 1 billion dollars. Under the establishment of this act in 1971, Native corporations obtained the title to the land and subsurface resources on the full forty million acres. Subsurface title transferred to twelve regional corporations; surface title is transferred partly to regional and partly to village corporations (Bankes, 1983, p. 165). The revenues from the subsurface resources (subsurface title) and timber are redistributed among the twelve regional corporations each year (Bankes, 1983, p. 166; Standlea, 2006, p. 28). Beyond those 44 million acres, federal and state governments own subsurface rights.

In order to implement ANCSA, twelve Native corporations were established in Alaska and a thirteenth in Seattle. Each Alaska Native person received about 100 shares in both regional and tribal organizations. Their descendants can inherit these shares. The regional corporations hold rights to subsurface resources on their land. In order to provide an equal distribution of land resources among Alaska Natives, 70 percent of natural resource revenues accumulated from timber and the subsurface resources must be shared annually with the other 11 corporations in Alaska according to Native enrollment in each region, a principle based on revenue sharing (Bankes, 1983, p. 166; Mikkelsen, Haley & Øygarden, 2008, p. 144).

Besides for-profit ANCSA corporations, each Alaska Native region has a regional nonprofit corporation. They work as advocacy organizations as well as the incorporators of the ANCSA for-profit corporations. At this time, the Native nonprofit corporations administer social, education and health services, apart from the ANCSA corporations (Department of Commerce, Community and Economic Development, 2015).

ANCSA set up the requirement that regional and village Native corporations be profit-making enterprises. Consequently, meeting the social needs of their members need not be the priority. As any for-profit corporation, under the provisions of the Alaska Corporations Code, the Native corporations are required to use their best efforts to make a profit; otherwise, shareholders could initiate lawsuits for breach of corporate responsibility. Therefore, some corporations limit corporate purposes to promoting economic development for shareholders in their articles of incorporation (Case & Voluck, 2002, p. 337). There are some business risks for the Native corporations. For instance, in 1986, the Bering Straits Native Corporation announced bankruptcy due to poor investments. In filing for bankruptcy protection, Bering Straits listed assets of $7.1 million and debt of $20.5 million owed to 100 creditors. Some Alaska Natives blamed the

corporate structure of Native corporations, stating that this structure does not fit into their traditional culture. "The corporate structure . . . mandates a new method of thinking for those people whose historical approach to survival is based on a subsistence economy [fishing, hunting, trapping, and gathering] (Baumgartner, 1986, April 21)." In 1988, Congress amended ANCSA to make Alaska Natives eligible for all federal Indian programs on the same basis as other Native Americans under any other provision of law (Case & Voluck, 2002, p. 337).

4.1.2.1. Case Study: Alaska North Slope's Oil Development

Alaska's oil extractive industry is located on the North Slope, and it has produced over 17 billion barrels since its discovery (Resource Development Council for Alaska, 2015). The North Slope of Alaska has the largest oil field in North America, Prudhoe Bay. It was discovered in 1968, and oil development started in 1977. The territory of the North Slope has 23 producing reservoirs, including both onshore and offshore deposits. Most of the production occurs on state-owned land. Prudhoe Bay did not have any permanent settlement until the construction of the work camp in 1968. The State of Alaska owns subsurface rights in the Prudhoe Bay area (Mikkelsen, Haley & Øygarden, 2008, p. 140-141). The Indigenous peoples of the North Slope are the Iñupiaq. The nearest village to the Prudhoe Bay complex is Nuiqsut, which is about 50 miles from the field. The traditional subsistence activities of the Iñupiaq include hunting, fishing, and bowhead whaling (Kruse, 2010, p. 57).

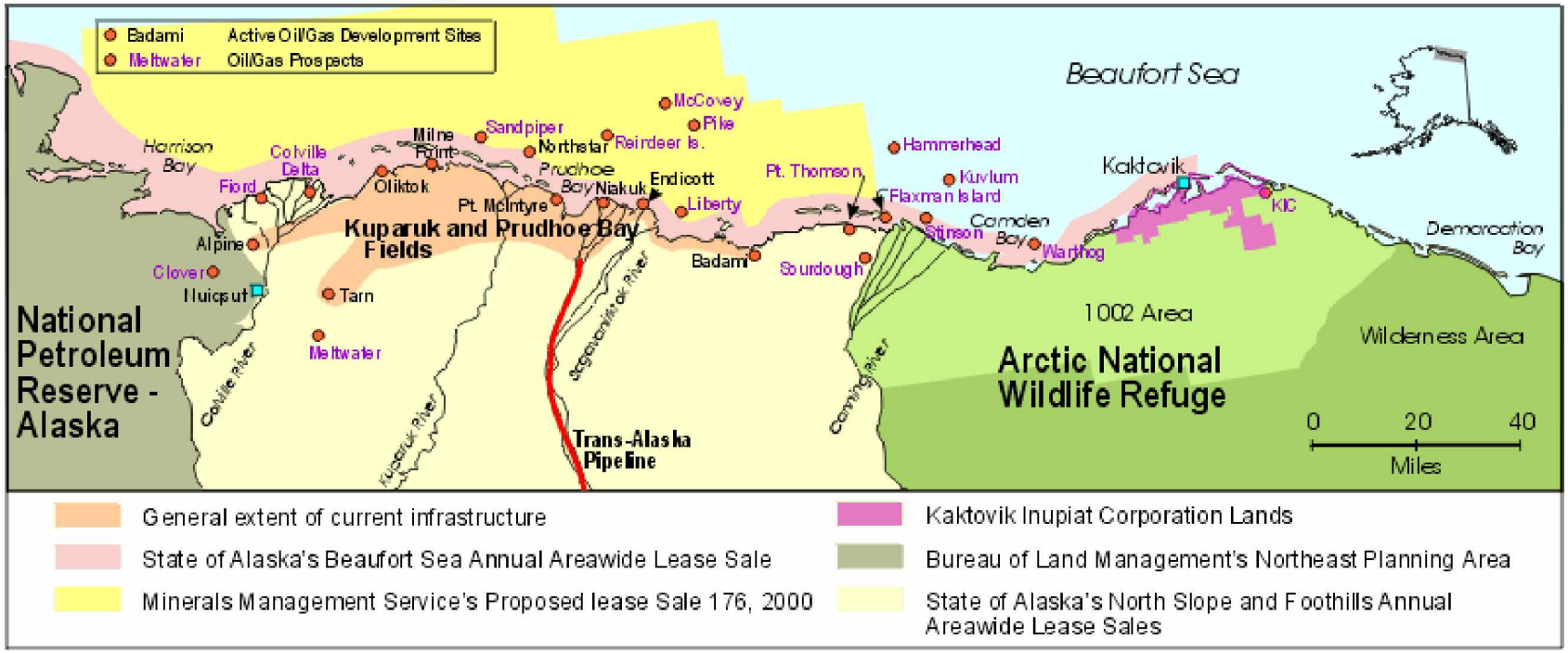

Figure 4.3. Oil and Gas Activities on the North Slope, Alaska (U.S. Fish and Wildlife Service, 2001).

How has oil production affected the local Indigenous people in the North Slope? Kruse, Kleinfield & Travis (1982) argue that in most cases the well-being of Indigenous peoples has not improved with energy development. For instance, in 1977 in New Mexico, when the Navajo Tribal Council received a right to lease natural resources, including oil, to energy corporations, only a small elite group of Indigenous peoples earned high wages from the oil drilling. Despite the fact that 60 percent of the industry's jobs were held by Navajo workers, only 3 percent of Navajo were jobholders. This factor caused inequality between Navajo household incomes. Also, the oil revenues that the Navajo tribal government received from the energy corporations were not high; they were far below the market price. Consequently, the resource extraction on Navajo lands mostly increased the income inequality among Indigenous population (p. 97).

In order to determine to what extent the oil and gas extraction in the North Slope affect the local Indigenous population, Kruse (2010) measured the level of local sustainability and life satisfaction of this region. The study compared statistical data from 1977, before the oil production, and the comparatively recent information from 2003, after twenty-six years of extraction. Kruse included the socioeconomic indicators of local livelihoods, which included the following domains: ties with nature (such as amount of fish and game harvested, opportunities to fish and other concepts), material success (work for pay, cost of living), education, health, cultural continuity (sharing and helping), and fate control (voting). Kruse hypothesized that the level of Iñupiat satisfaction would decrease due to the lack of increase in local incomes, the decrease in the number of subsistence activities, the lack of employment, the lack of education improvement, the decrease in civic participation, and other factors related to non-local resource development (p. 59-60). However, in accordance with the research results, North Slope and

Northwest Arctic Iñupiat were highly satisfied by their life in their communities (Kruse, 2010, p. 70).

Kruse (2010) assumed that the North Slope Iñupiat had enough authority to influence resource development activities, and this power helped them to understand and to create opportunities to decide what could work best for them. The incorporation of the North Slope Borough (NSB) in 1972 provided them the opportunity to participate in the oil development (p. 71).

Morehouse & Leask (1980) highlight two main elements that predisposed the creation of the North Slope Borough. First, it was the discovery of oil in Prudhoe Bay and the field's development. The existence of the oil deposits gave the Iñupiat the opportunity to make direct claims on the oil revenues and to use the tools of self-government to implement these claims. Second, the Arctic Slope Native Association (ASNA) that was created in the mid-1960s in order to protect North Slope interests in the process of native land claims activities was another element that helped the North Slope Iñupiat to succeed. Alaska became a state in 1959. The Alaska Statehood Act granted the right to the state to select lands. Some of the selected lands were located at Prudhoe Bay, and the state initiated leasing of these lands for the purpose of oil exploration. This process pushed North Slope leaders and other Native communities to form the Arctic Slope Native Association in order to set up a claim to the lands north of the Brooks Range. Subsequently, numerous Alaska Native land claims led to the adoption of ANCSA. Then, under the rules of ANCSA, ASNA leaders organized the Arctic Slope Regional Corporation as one of the thirteen Native corporations. ASNA leaders were also initiators of the creation of the North Slope Borough (Morehouse & Leask, 1980, p. 19-22). Also, there was an additional factor - strong organization and leadership among the Iñupiat. The Iñupiat traditions of leadership

helped them to establish a powerful structure for the borough, upholding their right of taxation and local regulation. Hence, the combination of strong native leadership and the discovery of oil at Prudhoe Bay gave an opportunity to the local Indigenous peoples to create powerful self-governance on the North Slope (Morehouse & Leask, 1980, p. 19-21).

The oil development in Prudhoe Bay has created the largest tax base in Alaska, but the local population is relatively small. This fact was a reason the Borough incorporated in 1972. The right of the NSB to levy taxes led to the conflict between the Borough, oil companies and the state government. The state opposed local jurisdiction over the Prudhoe Bay property tax base, whereas oil companies were interested in minimization of their tax payments. As a result, major oil companies appealed to the court against the borough incorporation (the case *Mobil Oil Company and others v Local Boundary Commission, and others, 1972*), but in this case the Alaska Supreme Court ruled in favor of the North Slope, confirming that the incorporation was constitutional. Then, in 1976, the North Slope Borough levied a property tax in addition to other taxes, and this caused complaints from the oil companies, as this additional tax exceeded the amount of taxation established by state laws. In 1978 the Supreme Court of Alaska decided that property tax could be levied without limit, as this tax was levied for debt service on bonds, which made it possible to be exempt from limitations (Morehouse & Leask, 1980, p. 22).

After the incorporation, the North Slope Borough made a decision to spend these funds on the construction of local infrastructure. A capital improvements program, organized in 1975, was aimed to build new schools, houses, roads, airports, hospitals, and other facilities in the local villages within the Borough. This program significantly improved the local living conditions and has employed many Iñupiat workers (Morehouse & Leask, 1980, p. 25; Kruse, 2010, p. 71). The Borough had enough funds to establish a regional Wildlife Management Advisory Committee

(Kruse, 2010, p. 71-72). This Committee meets on a quarterly basis to discuss the effects of development on fish and game resources, bears, wolves, and marine mammals (Alaska Department of Fish and Game, 2015).

Overall, the success of the North Slope Iñupiat can be explained by the local Indigenous control over tax revenues, and also, by the fact that the extractive fields are located mostly away from their population centers, which means that there are not so many negative impacts on their subsistence resources (Kruse, Kleinfield, & Travis, 1982, p. 105).

The offshore development on the Outer Continental Shelf could be a worse experience for the Iñupiat. The extraction, which started in the 1980s, affected the movement of a bowhead whale, and potentially would have harmed the subsistence life of Iñupiat. The possibility of oil spills is still high. In 2006, the BP pipeline ruptured at Prudhoe Bay releasing 276 000 gallons; it was the largest land-based oil spill on the North Slope. The possibility of oil spills was one of the reasons why the North Slope Borough strongly opposed the offshore development (Mikkelsen, Haley & Øygarden, 2008, p. 154). Another reason was that the borough did not receive property taxes from the production, as the offshore development occurred on the federal territory. The Outer Continental Shelf (OCS) Lands Act granted to the state 7 percent of the federal revenues from mineral development within 3-6 miles from shore. Beyond this zone there is no legal provision for revenue sharing. Luckily for the Iñupiat, in the 1980s the offshore leases were stopped, because of the lack of economic viability (Kruse, 2010, p. 72; Mikkelsen, Haley & Øygarden, 2008, p. 147).

The success of the North Slope Borough led to a scientific discussion around what type of self-government is more effective for the protection of Indigenous interests, and also, whether the state or the federal government is a better partner in relationships with Alaska Natives.

William DuBay, cited in Zellen (2008, p. 116), argues that Native people could effectively control the land use and development in their regions only by organizing local boroughs. If the North Slope regional organization was formed as a reservation, it would definitely not be successful in the same way. DuBay gives the example of when oil development in Louisiana negatively affected the culture and subsistence of local Cajun people. He also notes that the North Slope Borough as a municipal government had enough power to establish a regime that could manage the environment, the wildlife, and access to subsistence resources (Zellen, 2008), p. 117). It should be recognized that the North Slope Borough was organized not as a tribal government, but as a public body. The only difference between the North Slope Borough and other boroughs in Alaska is that the NSB is a native–controlled organization because of the majority Alaska Native population in the region and their electoral success. It was created not under ANCSA, but under the state rules. Looking forward, if the majority of the NSB population is non-Native, it would no longer be considered an Indigenous self-government. Non-native voters might challenge the Iñupiat leadership and control of the NSB (Bankes, 1983, p. 175).

Thus, DuBay concluded that strong Alaska Native self-governance could be achieved not by the village corporation system established by ANCSA, but by using the Alaska Constitution and the Municipal Code. He concluded that the state was a better ally than the federal government. The former Alaskan Governor Walter Hickel shares the same point of view, assuming that the decision-making process on resource development is better solved locally in negotiations with the state, rather than with the federal government (Zellen, 2008, p. 115-117). However, there is also another point of view. After the adoption of ANCSA, there was some confusion about whether Native villages in Alaska should be considered as tribes. The State of Alaska and its state courts strongly opposed the creation of Indian Country in Alaska, and

thereby, it opposed the expansion of tribal governmental powers for many years. The slogan was "Alaska is one country, one people." In accordance with the Alaska Supreme Court decision in the case *Native Village of Stevens v. Alaska Management and Planning*, "There are not now, and never have been tribes of Indians in Alaska as that term is used in federal Indian law." This case shows that the state could also resist the idea of the extended Indigenous self-governance. Only in 1999, the Alaska Supreme Court recognized the tribal status of village governments (Strommer & Osborne, 2005, p. 4-5). Also, as it was noted above, the state opposed the incorporation of the NSB. So, there is no consensus about positive governmental relationships with Alaska Natives.

4.1.3. Obshchinas and the Federal Law "About Territories of Traditional Nature Use"

The *obshchinas* (clan communities) of Indigenous small-numbered peoples and territories of traditional nature use (TTNU) were designed by the same law – the 1992 decree. The Federal Law "About Common Principles of Organization of *Obshchinas* of Small-Numbered Indigenous Peoples of the North, Siberia, and the Far East of the Russian Federation" (2000) defined *obshchina* as "forms or self-organizations of persons belonging to Indigenous small-numbered peoples and joined by blood-clan (family, clan) and (or) territorial-neighbor indications, created for the goals of defense of their age-old surroundings, and the maintenance and development of traditional ways of life, economy trades and culture" (Osherenko's direct translation of Article 1 of the Federal Law) (Osherenko, 2000, p. 718-719). An *obshchina* has a legal status of a non-profit legal entity (Article 6.1 of Federal Law "About non-profit organizations" (Consultant Plus, 1996), but can gain profit for the purposes of its foundation.

It should be noted that *obshchinas* are not the only legal subject in Russian law that can claim the right to use territories of traditional nature use. There are three categories of actors who

can participate in Indigenous peoples-land relationships: 1) small-numbered peoples as ethnic communities that are included in lists confirmed by the Decrees of the Russian government; 2) organizations of these peoples, primarily *obshchinas*; 3) individuals who belong to small-numbered people, and who have a traditional way of life, or desire to have it, and who also want to use nature in traditional ways. Thereby, the relationships between the land and the Indigenous peoples differ depending on who is a legal subject. For instance, Indigenous small-numbered people could participate in land claims through their representatives and then transfer the lands to the management of *obshchinas*; *obshchinas* can co-participate in land management and distribute these lands among their members; and then, if the individual persons claim the lands, they can use the land plots according to their traditional customs (Kryazhkov & Larchenko, 2012, p. 239).

The types of territories of traditional nature use are divided into three categories: 1) territories of federal significance; 2) territories of regional significance; 3) territories of municipal significance. These lands may be derived only from the permission of the government authority, depending on the type of lands (federal – the Government of Russia; regional – regional government; municipal – local municipalities) (Kryazhkov & Larchenko, 2012, p. 247).

Since the adoption of the law, no territory of federal significance has been designated. Kryazhkov & Larchenko (2012) identify several reasons: 1) the process of formation of territories of federal significance is vaguely written; 2) unlike the territories under regional and municipal jurisdiction, territories of federal significance are not regulated specifically. Basically, regional and municipal governments have their local regulations (regional laws or municipal decrees) related to the territories of traditional nature use, whereas the federal government did not adopt any law in regard to the TTNU of federal significance; 3) federal authorities do not want to design this type of TTNU, because in this case their ownership of mineral resources

would be alienated, and the control of the lands would be obtained by Indigenous small-numbered peoples (Kryazhkov & Larchenko, 2012, p. 252). In 2002, the *obshchina* of small-numbered peoples in the Koryak Autonomous District applied to the Government of the Russian Federation, asking to form the TTNU of federal significance. The Government refused due to a lack of legislation that could explain the exact process of formation. Then, the *obshchina* appealed this decision to the court. The court did not uphold the lawsuit because of this same reason – lack of appropriate legislation, and in addition, due to controversies in the jurisdiction over the lands (Kryazhkov & Larchenko, 2012, p. 253).

Kryazhkov & Larchenko (2012) emphasize the key point in the relationships between *obshchinas* (or any Indigenous small-numbered legal subject) and land – the lands are granted by the government for the people's use only. The amendments of 2007 to the Federal Law "About ISNP" excluded the word "possession." The territory of traditional nature was implied to be a reserved, secure land and resource base, which would allow to Indigenous peoples to continue their traditional style of life and subsistence activities (Osherenko, 2000, p. 718). Kryazhkov & Larchenko (2012, p. 246) assume that the strategic goal of designating territories for traditional nature use was to avoid any alienation of these lands in order to save these lands for the future generations of Indigenous peoples.

Indigenous small-numbered peoples can use natural resources on the territories of traditional nature use for the purpose of pursuing their traditional way of life. Persons who do not belong to the group, but permanently live on their lands, can also use the resources for personal needs. Persons and legal entities also have the right to use natural resources in the territories for commercial purposes, if their activity does not contradict the interests of Indigenous peoples (Kryazhkov & Larchenko, 2012, p. 250).

Indigenous small-numbered peoples can also use so-called 'widely spread' mineral resources, such as pebbles, limestone, chalk, quartzite and others, included in the list created by the Ministry of Natural Resources in 2003. Subsurface resources are owned by the state, and cannot be alienated. Only commercial enterprises can be subsurface users (Consultant Plus, 1992). In 2012, the Committee on Ethnic Minorities Affairs of the State Duma initiated the law project. According to this project, a certain percent of revenues from the subsurface extraction was directed to Indigenous peoples. However, the State Duma did not adopt this law project (An-Online, 2012, February 28).

4.1.4. The Policy of Russian Sub-Governments on Indigenous Small-Numbered Peoples

The legislation of the Russian Federation, which regulates the relationships between the oil and gas extraction industry and Indigenous peoples, is mostly based on the following laws – Federal Law "About Guarantees of Rights of Indigenous Small-Numbered Peoples" ("About ISNP") (1999); Federal Law "About Territories of Traditional Nature Use of Indigenous Small-Numbered Peoples of the North, Siberia, and the Far East of the Russian Federation" ("About the TTNU") (2001); the Land Code of the Russian Federation (2001); and the Federal Law "About subsoil" (1992).

The Federal Law "About ISNP" introduces the basic principles of the protection of Indigenous peoples, including specific clauses in regard to their lands such as:

> a) Guarantees for Indigenous small-numbered peoples (ISNP) to use lands; to participate in control over lands' use, in compliance with nature conservation law, in decision-making about the protection of traditional lands, traditional lifestyle, economy and subsistence, in ethnological and ecological assessment; to receive restitution from ecological damages (Consultant Plus, 1999)

b) The introduction of 'ethnological assessment' as scientific research on impacts of changes on traditional lands and a sociocultural situation on the development of Indigenous small-numbered peoples as ethnos (Consultant Plus, 1999).

The Federal Law "About TTNU" was supposed to set up the 'public right' of Indigenous peoples who inhabit particular territories to use these lands for their traditional subsistence activities. This right cannot be sold, transferred, or transmitted to anybody except the state. Basically, this law created the possibility for Indigenous peoples to reserve lands for their traditional lifestyle (Kryazhkov, 2012, p. 33). Unlike the Aboriginal title, the law did not presume any commercial activities, including subsurface rent, by Indigenous small-numbered peoples. Compensation payments as an outcome of agreements between Indigenous peoples and petroleum corporations are, therefore, not legally fixed. Regional and local authorities can withdraw land plots within the borders of a TTNU, but in this case restitution is guaranteed (Consultant Plus, 2001a). Article 31 of the Land Code (2001) set up the possibility of holding a referendum if a withdrawal of land plots affects interests of Indigenous peoples (Consultant Plus, 2001b)

According to Article 8, Indigenous peoples need to initiate the creation of federal, regional, and local TTNUs as strictly protected territories with special legal regimes, which exclude withdrawal of lands without special permission. Articles 6, 7, and 8 introduce three categories of these lands: federal, regional, and local. In each case, the permission of an appropriate public authority is needed (Consultant Plus, 2001a). However, as practice has shown, clashes between federal, subnational and local jurisdictions over the lands have created barriers for Indigenous peoples to claim their lands. Moreover, the controversies and gaps in existing legislation make the situation worse (Arktika Segodnya, 2014, May 19).

The initiative to set up the representation of Indigenous peoples in regional parliaments was first introduced in the Khanty-Mansi Autonomous District and then spread to other Russian regions. The principle of a quota of small-numbered peoples in the regional legislature allowed them to participate in the policy-making process. Although all citizens of the Russian Federation have the right to elect and be elected, Indigenous peoples have specific quotas of representation in regional legislatures (Filippova, 2014, p. 151).

Nenets Autonomous District attempted to design specific ethnic constituencies by introducing new provisions in the Regional Law "About the Elections of Deputies of Nenets Autonomous District Assembly" in order to provide Indigenous representation in local legislatures. However, the Supreme Court of the Russian Federation invalidated these provisions in 2005. The Parliament of the Sakha Republic decided not to provide ethnic quotas in constituencies; however, instead of this, an initiative to form constituencies in areas of residence of Indigenous small-numbered peoples was successfully implemented. Thus, de-jure the federal laws were not violated, and, at the same time, the Evenki (local Indigenous peoples) were guaranteed to take 12 of 70 seats in parliament (Filippova, 2014, p. 151).

However, the Sakha electoral model lost its efficiency, after the decision of the State Duma to shift to a mixed electoral system, instead of a single-mandate. Then, the federal law eliminated the provision about the quotas of Indigenous small-numbered peoples in regional legislatures. Therefore, Indigenous peoples do not have any preference in electoral laws that could help them to participate in the policy-making process (Filippova, 2014, p. 152).

The Federal Law "About the Ethnological Assessment" was an attempt by regional policymakers to cover gaps in federal laws in the 'Indigenous law' area. Three regions with rapid industrial development -- Sakha Republic, Sakhalin and Yamal-Nenets Autonomous District --

implemented this law recently. The legal practice, however, shows that results of ethnological public assessment do not have enough legal power, and they are rarely accepted as evidence of environmental conditions in particular areas. Thus, the process of ethnological assessment needs be regulated at the federal level (Eurasian Legal Portal, 2014, January 14). Federal legislation is generally considered primary, and regional laws are only supposed to supplement federal ones.

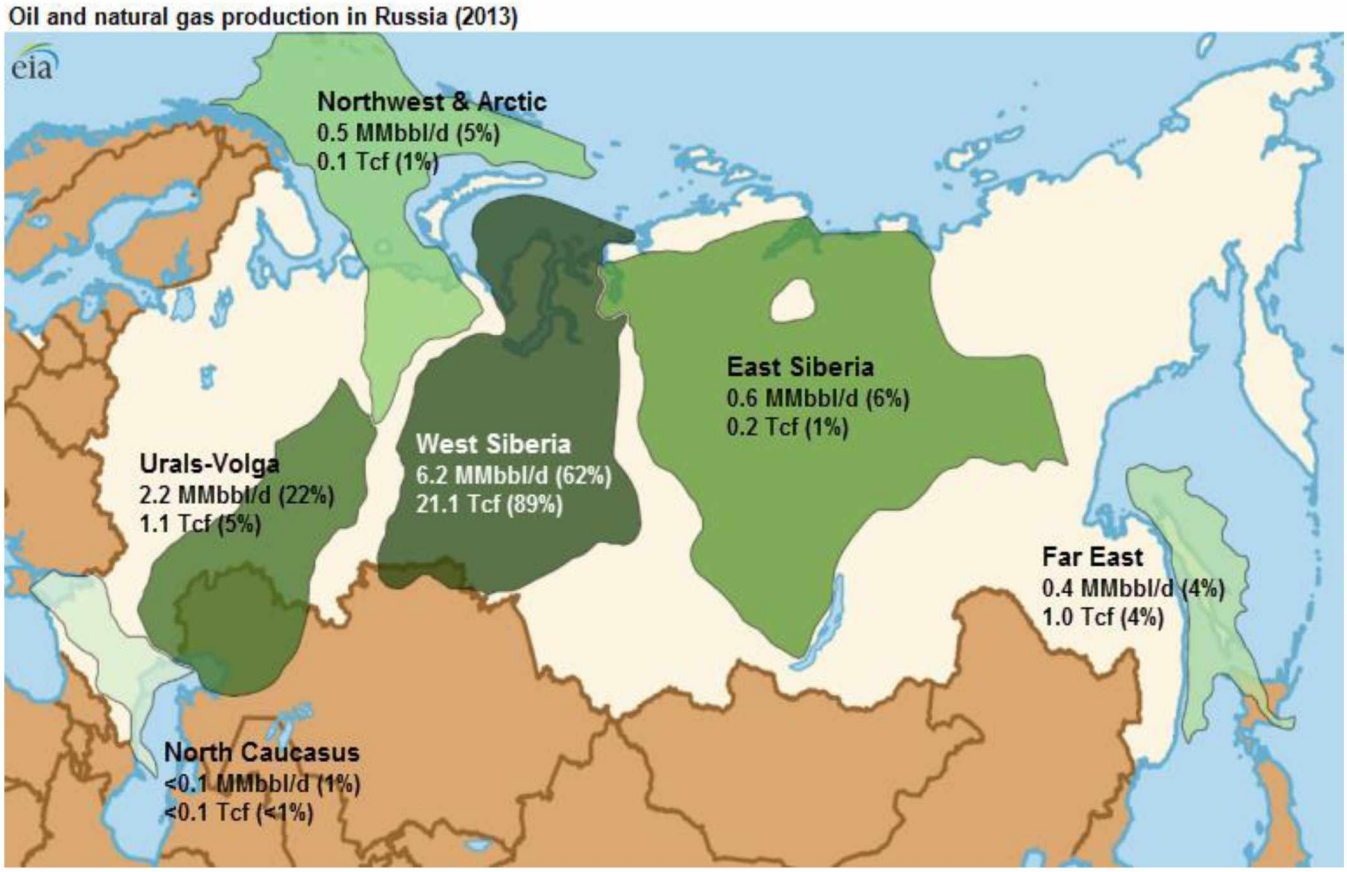

Figure 4.4. Oil and Gas Development in Russia (U.S. Energy Information Administration, Eastern Bloc Research, IHS EDIN (2013).

4.1.4.1. Nenets Autonomous District

The Nenets Autonomous Okrug (NAO) covers an area of 176,700 square kilometers of northwest Russia. The majority of the people in this district are ethnic Russians, and the Indigenous population, of Nenets people, is about 7,800. The NAO has a large reindeer-herding district in the Russian north, which is a traditional activity of Nenets. Nenets own reindeer collectively (in collective farms) and privately (as a personal property). Most Nenets people live in the rural area (tundra), where they have limited access to social services such as health care. They use reindeer as a main source of food; also, they use reindeer products, such as antler, for commerce. The cash economy is not prevalent in the local market, and Nenets usually exchange antlers for various consumables (Helander-Renvall, 2010, p. 199-200).

The oil industry came to the NAO in the 1990s. In 2004, it explored eighty-three oil fields on Nenets lands. The extraction of mineral resources made the economic situation harder for local reindeer herding, as the tax for collective reindeer farms increased up to 30 percent, and the transportation of reindeer became more difficult, because of the longer distances. The oil activity pushed the Nenets reindeer herders farther from markets. However, the rise of oil extraction helped in the development of communication and transport in the NAO. Before the presence of oil drilling, NAO inhabitants lacked electricity, vehicles, and portable devices. Now, herders are equipped with mobile phones, helicopters are used for air transportation, and off-road vehicles, such as snowmobiles, are widespread in a tundra.

Despite the negative environmental impacts of oil drilling, there are some positive effects of the development of the industry, such as: increased demand for reindeer meat among oil workers; new jobs within the oil industry for eligible Nenets; material, financial, and networking opportunities for local farms from the petroleum enterprises. Last, the local government obtains

some tax benefits from the oil extraction. However, oil drilling still destroys the Nenets' lands through oil spills, industrial waste, and, furthermore, negatively influences the migration of reindeer, fish and plant populations. Another problem is the social and cultural impact on the Nenets' livelihood including problems such as alcoholism, drugs, and violence against women (Helander-Renvall, 2010, p. 202-205).

At this moment, regional legislation of the Nenets Autonomous District includes three legal sources of local regulation that apply to Indigenous peoples: the Statute of the Administration of Nenets Autonomous District (the Statute of NAD); Regional Law "About Regulations of Land Relationships on the Territory of Nenets Autonomous District" (2005), and Regional Law "About Subsurface Use." The Statute of the Administration of the Nenets Autonomous District set up the rule that payments from subsurface use are supposed to be spent on socioeconomic development of Indigenous small-numbered peoples (Article 18). Granting and withdrawal of land plots and natural resources, which are not related to economic activities of Indigenous small-numbered peoples, must be confirmed by local government or be based on a decision by local referendum (Article 57 of Statute). According to the Law "About Regulations of Land Relationships on the Territory of the Nenets Autonomous District" (2005), withdrawal of land plots for industrial needs must be confirmed by Indigenous small-numbered peoples (Articles 19, 21). District's Administration can refuse the granting of land plots if their use directly threatens the ecological safety of population, conservation and development of traditional lifestyle, or economy of Indigenous small-numbered peoples (Article 22). Indigenous small-numbered peoples have a guarantee of restitution in cases of withdrawal of land plots for industrial needs within the territories of traditional use (Article 29). Subsurface users and the District Administration can sign an agreement about participation of subsurface users in the

socioeconomic development of the territories of traditional nature use (Article 10 of Law "About Subsurface Use") (Kryazhkov, 2014, p. 31).

4.1.4.2. Khanty-Mansi Autonomous District (Yugra)

Due to the early process of oil and gas industrialization, Khanty-Mansi Autonomous District (KMAD) was a pioneer in seeking solutions for resolving conflicts between oilmen and Indigenous peoples. Oil drillers occupied the traditional lands of Native peoples before the adoption of laws that protected rights of these peoples. As a result, the special status of Indigenous small-numbered peoples – Khanty, Mansi, and Nenets was introduced mainly because of their collaboration with oil companies. From 1992-2000s, Indigenous small-numbered peoples of the Khanty-Mansi Autonomous District (Yugra) received some of the District's lands in perpetuity for their use. This initiative was implemented in order to protect these lands from possible damage and to provide continuation of traditional nature use, subsistence activities, and lifestyles of the small-numbered peoples. The decree "About the Status of Tribal Lands in KMAD" (this act was invalidated in 2006) set up the responsibility of signing agreements between the owners of tribal lands and subsurface users (Kryukov & Tokarev, 2005, p. 113). During the socioeconomic crisis of the 1990s, authorities stopped issuing documentation of tribal land tenure; the Indigenous peoples could prove their land use rights only by signing economic agreements with oil companies (Novikova, 2008, p. 30).

The economic contracts with oil companies have become an important source of income for Indigenous peoples in KMAD. (Novikova, 2008, p. 31). The economic agreements with the Khanty, Mansi, and Nenets in Yugra usually included the following benefits: 1) one snowmobile 'Buran' per family, an autonomous power plant, and one boat engine; 2) 2 tons (528.34 gallons) of gas and 100 kg of diesel fuel; 3) cash compensation equal to minimum wage to each family

member; 4) payment for medical care in Russian hospitals and sanatoriums (Kryukov & Tokarev, 2005, p. 115-116). However, these economic agreements are not based on the evaluation of actual environmental damage to tribal lands. Moreover, some authors conclude that compensation payments for environmental damage must be mandatory and should be legally fixed in the legislation (Kryukov & Tokarev, 2005, p. 115-116).

Novikova (2008) links ecological problems in the Khanty-Mansi Autonomous District with ineffective environmental policy in Russia. She notes the tendency of Russian policymakers to charge oil companies for the environmental pollution and damages rather than to prevent possible oil spills. She also notes the "presumption of a potential ecological danger of oil companies' activities", emphasized in a report by leading ecological experts in Russia (Novikova, 2008, p. 34).

In recent times, there are only a few regional initiatives in current legislation in the KMAD that are different from the federal patterns. They are mostly related to the responsibilities of subsurface users to protect the territories of traditional nature use. Article 42 of the Regional Law of the KMAD "About Subsurface Use" places the responsibility of subsurface users to coordinate layouts of commercial objects within the borders of territories of traditional nature use with representatives of Indigenous peoples; any disputes on this subject are considered by the Commission of the territories on traditional nature use issues. According to Article 12 of the Regional Law "About Traditional Nature Use of the Indigenous Small-Numbered Peoples of KMAD", citizens and legal entities that are not subjects of the territories of traditional nature use law have special responsibilities towards Indigenous peoples such as: responsibility to coordinate layouts of industrial objects, responsibility to place transportation routes according to requirements of conservation law, responsibility to prevent aviation flights over places of

reindeer calving and grazing; and reimbursement to Indigenous peoples for damages (Article 12 of Law "About TTNU of ISNP of KMAD" (2006) (Kryazhkov, 2014, p. 31-32).

4.1.4.3. The Sakha Republic (Yakutia)

In order to export oil to Asian markets, the Russian government decided to expand infrastructure to Eastern Siberia. The Eastern Siberia-Pacific Ocean (ESPO) pipeline is supposed to deliver up to 80 million tons of oil per year from oil fields in Western and Eastern Siberia to the Pacific Coast. The first phase of this project, from Taishet to Skovorodino, which is near the Chinese border, was supposed to be constructed between 2006 and 2008; and the second phase, from Skovorodino to the Pacific Coast, was going to be implemented between 2008 and 2015. The Russian state-owned oil company Transneft developed this project, and its daughter company, the Center for Project Management of Eastern Siberia-Pacific Ocean (CPM ESPO), controls the construction process (Yakovleva, 2011, p. 710).

In the Sakha Republic, the Evenki people inhabit the lands crossed by ESPO. Unlike the Nenets and Khanty-Mansi Autonomous Districts, the Sakha Republic has the status of an autonomous republic. The Evenki have become a minority within another minority, the Sakha. De-facto Indigenous Sakha people dominate the region, but, unlike the Evenki, they are not recognized as Indigenous small-numbered people (Yakovleva & Grover, 2015, p. 205). Prior to pipeline construction, the Evenki people have been more concerned than content about the drilling. Fishing, hunting, and reindeer herding are the main traditional subsistence activities of the Evenki, an essential component of survival, and the river pollution could negatively affect their livelihoods (Fondahl & Sirina, 2006, p. 125-126).

In 2012, Transneft finished the construction of the ESPO pipeline (Upmonitor, 2012, December, 12). After the start of the project, the pipeline had three oil spill accidents, two of

them in Sakha (Newsland, 2010, February 19). It was determined that the possible reason of one of these accidents was the low quality of the pipeline (Sakha Press, 2014, October 18). Beyond this, Gazprom, a state monopoly company, planned to construct a gas pipeline from Yakutsk through Khabarovsk to Vladivostok (so-called 'The Power of Siberia) in 2011. The company proposed two possible routes: 1) follow the same route as the ESPO pipeline (northern way); 2) choose the southern route, which will lie through the other traditional lands of the Evenki, but will save 49 billion rubles. Two hundred thirteen people from the Evenki obshchhinas signed a petition to President Medvedev in 2011, begging him to reroute the gas pipeline from the southern way (Newsru.com, 2011). As a result, the pipeline is going to be constructed along the existing routes of the ESPO (Gazprom, 2015c).

The Indigenous small-numbered peoples of Sakha have already complained about the lack of negotiations between oilmen and Indigenous people. The parliamentary hearings in Il Tumen, Sakha legislature, recognized a problem of inefficiency in regional laws. Klavdia Tikhonova, head of the Evenki *obshchina* in the Aldan District, expressed her opinion about the ESPO:

> "Why does nobody inform oilmen that they are going to work on lands inhabited by Indigenous peoples? All land is entirely pitted, the forest is chopped, landfills, abandoned technical equipment are everywhere, and water is red. It is impossible to cross roads mounted on a reindeer. In spite of we have land rights and appropriate documentation nobody cares. It could be a good initiative to design a unified state program of cooperation between Indigenous peoples and industrial workers in order to sign agreements. We need a help of the government. (Il Tumen, 2014, December 30)"

The Even people are also included in the list of Indigenous small-numbered peoples in Russia. Mikhail Pogodaev, the president of the Russian Union of Even people, noted that the Sakha Republic has not yet solved its land use issues. The region designated four territories for traditional nature use within Olyokminsk, Aldan, Ust'-Yana, and Olenyok Districts. In comparison, Khanty-Mansi Autonomous District designated more than 400. Many *obshchinas* in Sakha do not have possession of their lands and there are many bureaucratic problems related to land *obshchinas* and their land holding, he emphasized (Iltumen.ru, 2014, December 30).

Despite the legal inefficiency, it would be unfair to say that the Sakha legislature does not provide legislation in regard to Indigenous small-numbered peoples and subsurface use. In 2003, the Sakha Republic issued the Regional Law "About Nomadic Tribal *Obshchinas* of Indigenous Small-Numbered Peoples in the Sakha Republic." This law attempted to preempt federal legislation, placing responsibility on local authorities to coordinate their decisions with Indigenous tribal organizations (*obshchinas*). In addition, *obshchinas* in Sakha were granted a right to intervene in activities of the public and local authorities.

However, the Supreme Court of the Sakha Republic cancelled these provisions in 2006, basing its decision on the lack of authority of the regional government to intervene in activities of the public and local authorities (Consultant Plus, 2006). Therefore, the regional power was accused of abusing its authority and had to delete these provisions from the law.

Nevertheless, another initiative of Sakha policymakers regarding Indigenous people was implemented successfully. The parliament adopted modifications to federal law in 2004, recognizing non-Indigenous ethnic peoples in the Sakha Republic (Russian Arctic old residents in Russkoye Ustye and Kolyma) as equal to Indigenous small-numbered peoples of the Sakha Republic (Tehekspert, 2009). This law granted the same benefits to long-time Russian residents

in Sakha (Yakutia), but it did not mean that they were recognized as small-numbered Indigenous peoples. Thus, this law did not contradict the federal law.

The law "About Northern Reindeer Herding" (1997) set up special rules for the protection of reindeer pastures related to the use of heavy transportation, and the keeping, transfer, utilization, disposal, and burial of industrial wastes (Article 23) (Kryazhkov , 2014, p. 33-34. According to the Regional Law "About Subsurface Resources" (1998), part of the compensative payments (up to 50 percent) from subsurface use on the areas of small-numbered and ethnic groups' residence must be spent for the purposes of socioeconomic development of these peoples and groups (Kryazhkov, 2014, p. 33-34. The Regional Law "About Tribal Nomadic *Obshchinas* of Indigenous Small-Numbered Peoples" (2003) recognized the rights of *obshchinas* to participate in supervising nature protection legislation's implementation and in ecological and ethnological impact assessments in order to recognize damages from drilling on tribal lands (Kryazhkov, 2014, p. 33-34). The Law "About Ethnological Assessment in areas of traditional residence and traditional economic activities of Indigenous Small-Numbered Peoples of the North of the Sakha Republic" (2010) determined the process of the making of ethnological assessment in Sakha (Kryazhkov, 2014, p. 33-34). Unlike the Nenets and Khanty-Mansi Autonomous Districts, the Sakha Republic could legally recognize the Russian Arctic old residents (Russko-Ustyintsi and Pokhodchane) as non-Indigenous communities that have the same rights as Indigenous small-numbered people.

4.2. Summary

Despite the joint jurisdiction of the federal and subnational governments over the relationships between oil companies and Indigenous small-numbered peoples, the regional parliaments mostly follow the federal pattern and do not preempt national legislation. Their

regional laws made the federal policy more focused and adapted to local circumstances, instead of adding something entirely new. Nevertheless, regional policymakers have attempted to improve the federal laws by setting up quotas for Indigenous peoples in their parliaments (Nenets Autonomous District), or providing an extension of *obshchinas'* authority (Sakha Republic). However, the federal government did not accept their initiatives, referring to the supremacy clause in the Russian Constitution. As a result, regional parliaments had to rewrite their laws in accordance with the federal legislation.

The comparison between tribal organizations of Indigenous peoples in Canada, the United States and Russia sheds light on the high vulnerability of *obshchinas*. Aboriginal groups and Alaska Native corporations have more independence from their governments, than *obshchinas* – they can be independent parties in negotiations with their governments and oil and gas corporations. They own and control their lands, and they can participate in the distribution of oil and gas revenues, whereas *obshchinas* do not have the same rights. Moreover, the process of collaboration between Russian Indigenous small-numbered peoples and petroleum corporations, including negotiations, consultations, and discussions are not legally fixed in current laws.

Chapter 5. Comparative Analysis and Discussion

5.1. Degree of Centralization/Decentralization of Indigenous Policy Formation

This chapter begins by addressing my first hypothesis that countries with strong subgovernmental jurisdiction over Indigenous peoples and subsurface resources have better legal protection of Indigenous peoples, as they have a possibility of establishing local laws, which could expand the legal status of Indigenous peoples. The results showed that while the federal governments in the United States and Canada have an authority over the relationships with Indigenous peoples and their affairs with oil and gas companies, in Russia the jurisdiction over Indigenous small-numbered peoples is joint between the federal and regional levels of the government, see Table 4. The doctrines of preemption and paramountcy in the United States and Canada serve as a barrier for state or provincial legislatures in the establishment of their own legislation towards the resource and tribal management in contradiction of federal laws. Although Russia does not have a common law foundation, the Constitution of 1993 set up the rule of a superiority of federal laws over regional laws. However, unlike the United States, and similarly with Canada, Russian regional governments have concurrent authority in affairs with Indigenous peoples. This means that, depending on their responsibilities granted by the Constitution, regional governments can establish a legal regime of protection of Indigenous people within their territory. Theoretically, regions in Russia could influence the relationships between Indigenous peoples and subsurface users within their powers (Kryazhkov, 2013, p. 36). The long experience of oil and gas development in Western Siberia shows that only top-down initiatives could help to introduce a partnership between all stakeholders. The regional administration in Khanty-Mansi Autonomous District organized the local Indigenous association "Spaseniye Yugry," where one of the official goals of the newly formed tribal organization was

effective interaction with the local administration. At the same time, when the Indigenous Association in the Nenets Autonomous District attempted to organize round tables, this initiative failed because of the lack of interest from corporations and the local government.

5.2. Differences between Russian Federal and Subgovernmental Legislation in Regard to Indigenous Small-Numbered Peoples and Subsurface Users

The second hypothesis was that because of the concurrent jurisdiction between federal and regional laws, regional parliaments in Russia could preempt federal laws in the area of legal protection of Indigenous small-numbered peoples and their relationships with subsurface users. The federal legislation of Russia provides mostly general principles of Indigenous rights in regard to their traditional lands and subsistence, such as the rights of land use, participation in control over land use, involvement in decision-making processes, restitution of land plots in case of federal or provincial withdrawal and some other privileges in regard to land use. The Federal Law "About Territories of Traditional Nature Use" allows Indigenous small-numbered peoples (ISNP) to initiate the creation of local TTNUs as strictly protected territories with special legal regimes, which prohibit withdrawal of lands without special permission. The ISNPs have rights to use natural resources only within the boundaries of these territories. In regard to mineral resources, both federal and regional governments own all subsurface rights. The federal legislation is quite basic and it sets general guidelines, rather than giving specific orders. Adopting these general provisions, the federal government expected from the regional parliaments to discuss and issue their own local laws with a particular focus on the regional features.

Analysis of regional legislation of three oil and gas Arctic regions, the Nenets Autonomous District, the Khanty-Mansi Autonomous District, and the Sakha Republic showed

that although federal and regional governments have concurrent jurisdiction over Indigenous small-numbered peoples, only a few regional laws were different from the federal ones. For instance, the laws of the Khanty-Mansi Autonomous District provide corporate responsibilities in case of resource extraction to coordinate layouts of industrial objects, to place transportation routes according to requirements of conservation law, to prevent aviation flights over places of reindeer calving and grazing, and recoup Indigenous peoples for damages. In the Sakha Republic, Indigenous legislation, covers local Russian Arctic old residents, in addition to ISNP.

Overall, despite some regional differences, there are not many essential differences in the legislation of all these regions. The regional laws, rather, specified and supplemented the federal ones. Basically, regional parliaments adapted their legislation from federal laws in order to eliminate possible contradictions and gaps. The supremacy clause doctrine (or so-called strong "legal force" of the federal laws) did not afford many opportunities for local regulation. At the same time, regional regulations are necessary for Russia, as federal laws could be slow and do not fit all needs of Russians regions.

5.3. Dependence of the Federal Governments on Oil and Gas Revenues

The third hypothesis was that the higher dependence of the federal budget on oil and gas profits, the less legal protection Indigenous peoples would receive in regard to oil and gas extraction. The federal oil strategies and current petroleum development in Canada, the United States and Russia indicated that each country has an interest in petroleum development in the Arctic. However, only Russia strongly promotes Arctic oil and gas development. The analysis of the distribution of oil and gas taxation revenues showed that while the federal government of Russia levies almost all taxes and royalties from oil and gas extraction, the regional governments receive only corporate income tax revenues. By contrast, oil-rich subgovernments Alberta

(Canada) and Alaska (U.S.) greatly benefit from oil production and taxation. Moreover, oil and gas export constitutes an essential part of the Russian state budget. These results led to the conclusion that high dependence of the Russian budget on the export of natural resources and payments from natural resource use makes the federal government of Russia more interested in profits from drilling and less inclined to protect f Indigenous small-numbered peoples.

5.4. Level of Capacity of Indigenous Groups to Protect Their Stakeholder Interests

The fourth hypothesis stated that if more authority is given to tribal (Indigenous) communities, it will provide them with better legal protection in relationships with oil and gas companies. The following analysis was focused on the capacity of tribal organizations to control their traditional lands, and benefit from subsurface extraction. The types of tribal government in each country are different: self-government in Canada; municipal, traditional, IRA governments and regional and village corporations in Alaska; and non-profit organizations (*obshchinas*) in Russia. The legislation of each country recognized the right of Indigenous peoples to organize their tribal governance, except that Russia excluded Indigenous peoples whose population is larger than 50 thousand people. The right of Indigenous peoples to use and control their lands is determined by the federal government: in Canada by a decision of the Supreme Court, which allowed Aboriginal peoples to negotiate comprehensive land agreements, in Alaska by the federal acts (the IRA, ANCSA, ANILCA, and traditional governments are federally recognized), in Russia by the Federal Law "About Territories of the Traditional Nature Use (About TTNU)." According to these federal acts, the Canadian self-governments, organized under comprehensive land agreements have the right to own their lands, and receive benefits from surface and subsurface resources; in Alaska responsibilities of tribal governments are divided: the ANCSA corporations own lands, and receive benefits from the extraction of surface and subsurface

resources, traditional and the IRA governments control the tribal membership, municipal governments (public governments with a majority of Alaska Natives in power) have the right to levy taxes on oil and gas extraction; in Russia tribal organizations do not own lands, they can only use surface resources, and control lands jointly with federal and regional governments. In Canada, the lands owned by an Aboriginal group can be alienated only by a decision of an Aboriginal group, and only to the federal government or the province/territory. In Alaska, the ANCSA Amendments of 1987 prevented alienation of the lands, unless shareholders vote for this option. In Russia, the government can withdraw lands within territories of traditional nature use without the consent of *obshchinas*.

Before the start of oil and gas production, oil and gas corporations must negotiate standards of exploration with the governments and Aboriginal groups in Canada. In Alaska, as the owners of subsurface resources, Alaska Native regional corporations sign contracts with oil and gas companies. In Russia, the procedure of negotiations between the oil and gas companies and Indigenous small-numbered peoples about future exploration is not legally determined.

Overall, the results indicate that the Russian Indigenous tribal organizations have the lowest capacity to protect their lands from negative impacts of oil and gas production. The reason for the lack of land ownership and control over subsurface resources of the Russian Indigenous small-numbered peoples can be explained by the absence of a doctrine of Aboriginal title in Russia. The recognition of Aboriginal title in Canada and the U.S. allows Indigenous peoples to own their lands and receive benefits from the oil and gas extraction. The Russian government does not recognize the lands of Indigenous peoples as their ancestral property, and it grants them the collective right to use lands only because they need to live by their traditional

subsistence and economy. That is also a reason non-Indigenous peoples have a right to use natural resources on traditional lands if they have the same traditional lifestyle and lands.

5.5. Summary of Hypothesis Testing

Coming back to the research questions:

1) How are the Indigenous peoples of Canada, the United States, and Russia legally protected from the negative externalities of oil and gas drilling on their traditional lands in the Arctic?

Results: Russia has the lowest rate of legal protection of Indigenous small-numbered peoples from negative externalities of oil and gas extraction.

2) What is the key factor determining successful protection in each case?

The Aboriginal title is a key factor of the recognition of land claims of Indigenous peoples. The comprehensive land claims with Aboriginal groups in Canada and the Alaska Native Claims Settlement Act were based on this doctrine. The Aboriginal title in Canada and the United States provided guidance for the governments, leading them to recognize the common land rights of Indigenous peoples: 1) the right to own (not only use) lands and natural resources (in some cases, including subsurface) by Indigenous people; 2) the right to control and management of these lands (including self-governance); 3) the right to be involved into the process of negotiations with oil and gas companies; 4) the right to receive revenues from the extraction. Unlike Canada and the United States, Russia does not recognize the Aboriginal title. The government grants use of lands and natural resources only because the Russian government recognizes that the Indigenous small-numbered peoples need to live by their traditional lifestyle and have their traditional economy in order prevent potential extinction of their cultures and assimilation with the dominant Russian culture. This policy of preservation of Indigenous

traditional lifestyle continues from the Soviet times. It is also not their special prerogative; non-Indigenous people can also live on these lands and use natural resources if they have the same way of life.

Another factor that needs attention is the process of negotiations between oil and gas corporations and Indigenous peoples about future drilling operations. While Indigenous organizations in Canada and the United States are involved in collaboration with petroleum companies, this process is not determined and legally fixed. Although federal legislation has the common principle of protection of Indigenous peoples, these groups cannot participate in discussions with oil and gas companies on an official level. The type of oil and gas company, whether it could be national, private or multinational company does not matter in this case.

The federal government has exclusive jurisdiction in any affairs with Indigenous peoples in Canada and the United States. This feature mostly refers to the specific history of the governments' relationships with Indigenous peoples. It is not clear whether this factor determines any advantage in the legal protection of Indigenous populations or not. Although regional governments in Russia have some jurisdiction over Indigenous affairs, their legislation mainly serves to supplement the federal law. Some regional initiatives have been prohibited because they interfere with federal authority. In general, when regional laws attempted to preempt federal laws, they were not successful.

The last factor that could affect the protection of Indigenous peoples in these countries is the dependence of the national governments on oil and gas revenues. It is logical to assume that countries with a high dependence on mineral resources would care less about the rights of Indigenous peoples and their lands, as their protection could reduce the profitability of extraction. Oil and gas revenues come directly to the State of Alaska and Canadian provinces,

whereas, the regions in Russia do not receive direct profits from extraction. The current Russian budget legislation prescribes that direct revenues from oil and gas extraction, such as royalties from leasing must go only to the federal government. The oil and gas regions can levy only corporate income tax from oil and gas corporations. The federal budget of Russia is highly dependent on oil and gas revenues, and the state controls almost all of the shares in the oil and gas industry, which makes the federal government stand by the position of business corporations.

Table 5.1. Degree of Centralization/Decentralization of Indigenous Policy Formation

Country	**Canada**	**United States (Alaska)**	**Russia**
Type of federalism	Executive federalism	Regulatory federalism	Asymmetrical federalism (before 2004); Centralized federalism (after 2004-recent times)
Type of regional division	Territorial	Territorial	Ethnic and territorial
Type of state regions	Provinces and territories	States	Regions (subjects) (autonomous districts, oblasts, krais, republics and cities of federal significance)
Key land claims and subsurface use legal acts	Calder v. British Columbia decision of 1973 of the Supreme Court of Canada (establishment of Aboriginal title)	ANCSA (designed and issued by the State of Alaska legislature) (1973)	Federal Law "About the Subsurface Resources"; Federal Law "About Small-Numbered Indigenous peoples"; Federal Law "About *Obshchinas*"; Federal Law "About the Territories of the Traditional Nature Use" (TTNU)
Jurisdiction over subsurface resources	Surface and subsurface ownership may be treated separately.	Regional corporations own the subsurface rights of both their own selections and those of the village corporations (ANCSA 1974)	Subsurface resources are state property and under the jurisdiction of federal and regional powers (Article 1.2 of Law "About Subsurface" (1992)

Table 5.1. continued

Existence of supremacy clause: situation when federal and state law contradicts	The doctrine of paramountcy establishes that where there is a conflict between valid provincial and federal laws, the federal law will prevail and the provincial law will be inoperative to the extent that it conflicts with the federal law.	Article VI of Constitution: Under the doctrine of preemption, which is based on the Supremacy Clause, federal law preempts state law, when the laws conflict.	According to Article 76.5 of the Constitution, laws and any legal acts of regions (subjects) of the federation cannot contradict federal laws.
Key explanatory point: Jurisdiction over affairs with Indigenous peoples (in regard to land claims and natural resources)	The federal government has exclusive authority to make laws affecting "Indians and Lands reserved for the Indians." (Constitution Act of 1867; Indian Act).	Exclusive responsibility of the federal government (Marshall Trilogy)	Concurrent jurisdiction of Russian Federation and regional governments (protection of traditional livelihoods) (Article 72 of Constitution)
Outcome to be explained: degree of centralization/de centralization of Indigenous policy formation	Low capacity of the local (regional) legislatures to regulate relationships between oil and gas stakeholders and Indigenous peoples	Low capacity of the local (regional) legislatures to regulate relationships between oil and gas stakeholders and Indigenous peoples	Medium capacity of the local (regional) legislatures to regulate relationships between oil and gas stakeholders and Indigenous peoples

Table 5.2. Difference between Russian Sub-Governmental Legislations in Regard to Indigenous Small-Numbered Peoples and Subsurface Users

Region (subject) of the Russian Federation	*Nenets Autonomous District (NAD)*	*Khanty-Mansi Autonomous District (KMAD)*	*Sakha Republic (SP)*
Legal protection in Russian law			
Federal law: The federal government provides general guidelines about Indigenous peoples and their right to use their traditional lands, excluding any subsurface rights. The Indigenous small-numbered peoples have a right to create territories of traditional nature use on the lands of their residence, with permission of federal and regional governments.			
Regional legislation			
The regional laws mostly supplemented the federal pattern.		The regional laws mostly reinforce the federal law, except: Corporate entities have special responsibilities towards Indigenous peoples such as: responsibility to coordinate layouts of industrial objects, responsibility to place transportation routes according to requirements of conservation law, responsibility to prevent aviation flights over places of reindeer calving and grazing; responsibility to compensate Indigenous peoples for damages	The regional laws mostly reinforce the federal law, except: Russian Arctic old residents of the Sakha Republic (Russko-Ustyintsi and Pokhodchane) are recognized as communities that have the same rights as Indigenous small-numbered people.

Table 5.3. Dependence on Oil and Gas Revenues

Country	**Canada**	**United States**	**Russia**
Who levies taxes and royalties on natural resources?	Provinces levy taxes and royalties on natural resources on their lands	States levy taxes and royalties on natural resources on their lands	The federal government levies most of the taxes and royalties from natural resources except corporate income tax; The oil and gas revenues constitute most of the national budget
Share of the federal government in oil and gas sector (major national oil and gas companies - -NOCs)	No Crown oil corporation in the petroleum industry	No share of the government in the oil and gas industry (which means no national oil company exists in the U.S.)	Most of the oil market is owned by national oil companies
Outcome to be explained	Low federal government dependence on oil and gas revenues	Low federal government dependence on oil and gas revenues	High federal government dependence on oil and gas revenues

Table 5.4. Level of Capacity of Indigenous Groups to Protect Their Stakeholder Interests

Tribal organizations	The Inuit Aboriginal Groups in Canada	Native governments and corporations in Alaska	*Obshchinas* in Russia
The type of legal entity	Regional self-government	Municipal governments (public governments); traditional and IRA tribal governments; regional and tribal corporations	Non-profit organization: *obschchina* of small-numbered Indigenous peoples
Who are recognized as Indigenous?	First Nations, Metis and the Inuit people	Alaska Natives	Indigenous small-numbered peoples with a population fewer than 50,000 people.
How the legal status of traditional lands is determined	Based on comprehensive land claims agreements	Corporations established by ANCSA own the lands. ANILCA officially recognized lands claimed by Alaska Natives, native land claims were officially approved	In accordance with the Federal Law "About the Territories of Traditional Nature Use", Indigenous small-numbered peoples need to apply to the Government of RF, regional or local governments (depending on the type of lands), if they want to organize territories of traditional nature use.

Table 5.4. continued

Participation of Indigenous organizations in negotiations with oil and gas corporations in regard to drilling on their lands	The standards for exploration of subsurface must be negotiated between the company, the Aboriginal group and the provincial government.	As the owners of subsurface resources, Native regional corporations sign contracts with oil and gas companies.	This procedure of negotiations is not determined by the legislation. The oil and gas companies in Khanty-Mansi Autonomous District de-facto sign agreements with *obshchinas*.
Benefits from oil and gas extraction for Indigenous organizations	The Inuit Aboriginal Groups can discuss ownership of subsurface resources in the process of negotiation of comprehensive land agreements with governments.	Municipal governments have taxation rights if the drilling is on their lands; Native corporations directly receive oil and gas benefits.	The government owns subsurface rights. *Obshchinas* cannot receive any direct benefits from extraction.
The possibility of alienation of Indigenous lands	The lands can be alienated only by a decision of the Aboriginal Group, and only to Canada or province.	Amendments of 1987 prevented alienation of the ANCSA stock unless shareholders vote for this option.	Regional or local authorities can withdraw land plots within the borders of a TTNU.

Table 5.4. continued

Key explanatory point: The type of land possession by Indigenous peoples	Calder v. British Columbia; Supreme Court of Canada's decision recognized the existence of Aboriginal Title.	ANCSA recognized the Aboriginal title and divided lands between Native corporations.	Aboriginal title is not recognized.
Outcome:	High level of Indigenous communities' capacity to protect their stakeholder interests	High level of capacity of Indigenous communities to protect their stakeholder interests	Low level of Indigenous communities to protect their stakeholder interests

Table 5.5. Hypothesis-Testing

Independent variables	**Canada**	**United States (Alaska)**	**Russia**	**Key explanatory points (difference of the Russian approach)**
Degree of centralization/de-centralization of Indigenous policy formation	High centralization	High centraliza-tion	Medium centralization	Exclusive federal authority over Indigenous peoples in Canada and the U.S.; concurrent jurisdiction of federal-regional authorities over Indigenous small-numbered peoples in the Russian Federation
Difference between the legislation of Russian regions	-	-	No difference	Supremacy clause creates a barrier for the regional legislatures in Russia in establishment of their local Indigenous small-numbered peoples legal regimes
Dependence of federal government on oil and gas revenues	Low dependence	Low dependence	High dependence	Existence of state-controlled oil and gas companies in Russia and dependence of federal budget on revenues from natural resources jeopardize the legal protection of Indigenous small-numbered peoples from oil and gas extraction
Level of capacity of Indigenous organizations to protect their stakeholder interests	High level of capacity	High level of capacity	Low level of capacity	Aboriginal title as an element of common law in the U.S. and Canada helps Indigenous organizations to set up control over their lands (self-governance), whereas *obshchinas* in Russia do not have this possibility.

Table 5.5. continued

Outcomes (dependent variable):	High degree of legal protection of Indigenous peoples from negative externalities of oil and gas extraction.	High degree of legal protection of Indigenous peoples from negative externalities of oil and gas extraction.	Low degree of legal protection of Indigenous peoples from negative externalities of oil and gas extraction.

Lack of aboriginal title doctrine in Russian legislation deprives Indigenous small-numbered peoples of ownership and/or control of their lands; The federal government is more interested in oil and gas extraction than in protection of Indigenous small-numbered peoples and their lands, because of its dependence on petroleum state-controlled corporations and their oil and gas profits. Although *de-jure* Russia has concurrent jurisdiction between federal and regional laws, *de-facto* regional legislatures cannot extend rights of Indigenous small-numbered peoples within their territories, because of supremacy clause doctrine in the national law.

Chapter 6. Conclusion

6.1. Findings of the Study

The expected results at the beginning of the study were as follows:

1) The subnational regulation of oil and gas development provides a higher level of participation of Indigenous peoples in negotiations with the government and oil and gas entities than federal control;

2) Regional legislation expands the participation of Indigenous peoples in the decision-making process about oil and gas extraction on their lands;

3) The federal governments that benefit more from oil and gas extraction have less interest in the protection of Indigenous peoples;

4) The protection of Indigenous peoples from the negative externalities of resource extraction depends on the legal status of the Indigenous organization determined by national law.

Overall, the findings reveal several factors that influence Indigenous participation in oil and gas development:

The Indigenous policies in the United States and Canada are highly centralized -- subnational governments do not have the authority to issue laws in regard to Native lands and their participation in resource development. At the same time, sub-governments receive the revenues from the resource extraction on their lands, which contributes to most of the budget in oil and gas-rich provinces and Alaska. Hence, considering the fact that the resource-rich states/provinces/territories are dependent on drilling profits, the federal jurisdiction over Indigenous peoples plays the role of "patron," protecting them from possible abuses by sub-governmental legislatures.

The contrasting case is Russia, where there is decentralized jurisdiction over Indigenous small-numbered peoples, and most of the resource revenues go to the federal budget. The Russian resource curse could be one of the reasons for the weakness of Indigenous laws, especially in regards to their participation in oil and gas development. Federal authorities in Russia are resistant to the creation of the territories of traditional nature use if these areas have federal significance. As court precedents have shown, the courts usually make references to their decisions to the lack of legislation, which could explain the bureaucratic process, and also the conflict of jurisdictions between the various kinds and levels of state authorities. However, it is unclear why the national parliament did not make any amendments to the laws since 2001. Indigenous peoples in Russia are, *de-facto*, dismissed from the decision-making process about the oil and gas extraction. The regional parliaments attempted to extend the rights of Indigenous peoples, such as introducing a special quota for Indigenous representatives in the regional parliament. However, the practice showed that the federal courts strongly resist any innovation.

Thus, the hypothesis that decentralized jurisdiction provides for stronger protection of them is neither wrong nor correct. Rather, it would be fair to conclude that the better policymaker for the Indigenous policy is an authority that does not gain profit from resource extraction. In the Russian case, the low involvement of Indigenous peoples in resource development can be explained by the national 'resource curse' economy. How would Indigenous politics change if oil-dependent, for example, Alaska had the authority to adopt legislation in regard to Alaska Natives?

The Aboriginal title is an essential element of land policy for Indigenous peoples. This doctrine serves two functions. First, it recognizes the right of ownership and control over their lands to Native peoples, which helps them to be equal partners in negotiations with oil and gas

companies. In the Russian case, where Indigenous peoples do not have any right of possession, the oil and gas corporations often abuse their right to use mineral resources by damaging and polluting their traditional lands. Moreover, the corporations in Russia do not even negotiate with Indigenous communities, as they do not have any legal obligations. *Obshchinas* are not owners; they have only the collective right to use the lands. Second, this doctrine clarifies the lands' status and prevents any possible al ienation – the governments cannot withdraw their lands for the purpose of drilling, as could happen in Russia.

The definition of an Indigenous organization as a legal entity is important for the determination of their capacity to be an equal partner in collaboration with oil and gas corporations, and benefit from extraction. From this perspective, ANCSA corporations are the most equal in negotiations with oil and gas corporations, as they cooperate with them as business partners. The corporate structure of Indigenous organizations helps Alaska Natives to hold land and capital, without dependence on state decisions. At the same time, ANCSA corporations are more protected than regular corporations, as the amendments to ANCSA prevented any lands' alienation in the case of bankruptcy.

The Aboriginal groups in Canada have also been involved in negotiations about resource extraction with governments and oil and gas companies on their lands. Although they would not have full ownership over subsurface resources, they can have a right of interest in subsurface title shared with provinces/territories. The Aboriginal groups can also claim the right of self-governance, during or separately, from the land claims process.

Having the legal status of non-profit organizations, *obshchinas* are restricted in their activities. According to the Federal Law "About Non-Profit Organizations", non-profit organizations can gain profit, only in accordance with their original goals, so only certain

commercial activities are permitted. Part 2 of Article 24 of the Federal Law specifies this activity as "production of goods and services that meet the goals of creating of a non-profit organization, as well as the purchase and sale of securities, possession and non-possession rights; participation in economic societies and participation in limited partnerships as a contributor. The legislation of the Russian Federation may set up the restrictions on commercial and other for-profit activities." Thus, *obshchinas* have the right to have certain kinds of for-profit activities, but they cannot be as free in their business activities, as compared to ANCSA corporations and the Canadian Aboriginal groups. This means that *obshchinas* have a very weak position towards oil and gas companies. Even if compensation from these companies for environmental damage was legally fixed, it would be hard for *obshchinas* to invest these payments in order to increase funds. Thereby, the hypothesis about the legal status of Indigenous organizations and the impact on the protection of Natives is correct.

This study was limited by the several factors. First, due to the differences in common and continental legal systems, it was hard to predict how the Russian laws would work in practice. The Russian legal system consists of many legal acts issued by the national and subnational parliaments and additionally, by the President and the Government of Russia, which vary in their legal power. Judicial decisions in Russia do not have the same legal power, as in Canada and the U.S. Therefore, the Russian laws were interpreted without references to court precedents, only in theory. Judicial review would clarify the legal provisions better.

Second, there is a lack of case studies within the Russian regions provided by Western researchers. The existing ones were completed ten or more years ago when law and politics in Russia were different. Moreover, most of the Western researchers do not provide studies related

to Russian legislation. Russian political scientists generally do not present the information in accordance with the Western standards, which makes the study complicated.

6.2. Recommendations (Policy)

Russia has the lowest level of participation of Indigenous peoples in oil and gas development. With this in mind, my policy recommendations will address this country. The Indigenous small-numbered peoples have little representation in politics, which translates to having limited options to influence national politics. The possibility of their protection by RAIPON is doubtful, due to many attacks on this organization. In this context, it seems rational to include representatives of the Arctic Russian regions with the small-numbered peoples, in the Arctic Council. As was mentioned in the introduction, subnational governments in Russia have wide experience working with Indigenous peoples. Moreover, they can directly impact Indigenous policies in their regions by adopting the laws. They would, for instance, adopt recommendations of the Permanent Participants of the Arctic Council.

The representatives from Arctic ethnic republics (Sakha, Komi republics) in the Russian Federation could be even more useful and knowledgeable participants in public policy. Russian law does not recognize larger Indigenous populations, but they are, *de-facto*, Indigenous (in accordance with ILO Convention), and they also have a traditional way of life, and they live by traditional subsistence. Thus, the ethnic minorities could understand the needs and expectations of Indigenous peoples very well.

The existing oil and gas development in Western Siberia shows that the top-down approach, when the government is an initiator of the partnership, works better than a bottom-up approach, when Indigenous movements organize the dialogue with the government and oil and gas companies. Also, there is a political tradition of a strong central power in Russia. Thus, the

federal government should initiate the participation of Indigenous peoples in oil and gas development, and then give the authority to control this partnership to regional governments. There is one way to implement this approach using a legal tool. The amendments to the existing Indigenous and oil and gas legislation should to be adopted on the national (federal) level, and then, be supplemented by the regional legislation in order to provide the same legal protection in all oil and gas-extractive regions. The adoption of a federal legal act that could regulate Indigenous participation in oil and gas development such as the Federal Law "About the Determination of the Procedure of Negotiations between the Federal Government, Regions and Indigenous *Obshchinas* About the Socioeconomic Aspects of Oil and Gas Development" is strongly recommended.

Due to the presence of many Indigenous ethnic groups on the territory of the Russian Federation, including larger Indigenous groups, the possibility to recognize and implement the doctrine of Aboriginal title in Russia is dubious. The larger Indigenous groups have already achieved autonomy similar to Nunavut since Soviet times. If the Aboriginal title were recognized, a struggle for lands between larger and small-numbered Indigenous peoples would be inevitable. Moreover, the dominant population of ethnic Russians from the European part of Russia is also *de-facto* Indigenous. Also, the Russian government cannot afford to share oil and gas revenues with its regions or with Indigenous peoples, as the Russian national economy is dependent on oil and gas resources.

6.3. Recommendations for Further Study of the Subject

There are several areas in which future research is needed. The comparison between democratic countries with federal systems of governance and 'resource curse' economies is necessary to determine the actual impact of resource dependence on Indigenous politics. For

instance, Russia and Australia would be good subjects for future comparative studies. Second, further study of national oil companies and their behavior towards Indigenous peoples also may be useful, as nowadays, the NOCs occupy the majority of the oil and gas industry worldwide.

Case studies of resource-rich areas with large Indigenous populations would also be interesting. For example, the Sakha Republic is a region of 'minorities within minorities,' with a dominant population of Sakha, who are represented in politics more than other ethnic groups. Likewise, comparisons between Slavic-dominated Russian regions and ethnic republics may be useful for further interpretation of the nature of federalism.

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